THE CONVEYANCER
AND
PROPERTY LAWYER

VOL. 19, No. 6 NOVEMBER—DECEMBER, 1955

CONVEYANCER'S NOTEBOOK

RETIREMENT OF MR. DONALD CREE

The publishers record with regret that Mr. Cree has retired from the editorship of this journal (and from practice at the Bar) and that this issue is the last on which his name will appear.

It is thirty-five years since Mr. Cree was first associated with *The Conveyancer*, for it was in 1920 that he succeeded his father as editor of the monthly journal (now referred to as the Old Series) which was the predecessor of the present *Conveyancer and Property Lawyer*. For the whole of that period he has been responsible for the forms and precedents, and it was under his direction that the tremendous task of providing forms adapted to the 1925 legislation was undertaken. The results speak well for his work, and the publishers are glad to be able to acknowledge publicly the debt which they, and the readers of *The Conveyancer*, owe to Mr. Cree.

Donald Cree was born in 1879, and called to the Bar in 1902. He joined his father in chambers in New Square and remained in the same chambers until his retirement. He has long been a familiar figure in Lincoln's Inn, and was for a time a member of that exclusive and mysterious body, the Conveyancers' Institute (known in Lincoln's Inn as "The Forty Thieves"). Apart from his practice, his great interest has always been sailing. His nine-ton yacht *Gulnare*, bought more than fifty years ago, is well known in the Hamble river. He has since 1905 been secretary of the Royal Cruising Club, and is now Commodore of the Bar Yacht Club. The photograph opposite shows him in characteristic pose on *Gulnare*.

For the publishers his departure is a sad wrench. His sense of humour has made working with him a great pleasure, and the writer of this note in particular will miss the chats in office and chambers which have enlivened dull days for the past quarter of a century. We are sure that all our readers will join us in wishing him a long and happy retirement.

M. W. Maxwell.

Appointment of New Editor

Mr. Ernest H. Scamell, ll.m., of Lincoln's Inn, has been appointed to succeed Mr. Cree, and assumes responsibility for the precedents section of this journal as from January, 1956.

The Requisitioned Houses (Compensation) Regulations, 1955

Under the Requisitioned Houses and Housing (Amendment) Act, 1955 (noted *ante*, p. 258), the local authority may ask the owner of a house under requisition to take on the existing licensee as a rent-restricted tenant and offer him compensation for doing so. The amount of compensation is not to exceed the amount prescribed by statutory instrument. The regulations have now been made, the Requisitioned Houses (Compensation) Regulations, 1955 (S.I. 1955, No. 1331). They provide that the rate of compensation shall not exceed five times the amount of the rental compensation payable in respect of the house for the year ending with the date on which a notice of invitation is given to the owner.

In practice, invitations under the Act are being made except in the case of property which ought to come down and the maximum compensation is being offered to all owners except those who are lessees with very short terms to run. The question has been raised whether the compensation is liable to income tax in any form. It seems clear that it is not itself income in the ordinary course, nor is it an item to be taken into account in arriving at any excess rent liability. In the case of a property dealing company it would appear to be a trading receipt.

The Burden of Positive Covenants

A correspondent has written to say that he thinks Mr. Lyon Blease has raised (*ante*, p. 261) an alarming point by suggesting that the Law of Property Act, 1925, s. 79—which provides that a covenant relating to any land of the covenantor shall, subject to contrary intention, be deemed to be made on behalf of himself, his successors in title and the persons deriving title under him or them—be construed in the same way as section 78—which deals with

the benefit of covenants—was construed in the *River Douglas Catchment Board* case [1949] 2 K.B. 500. The correspondent argues that both Denning L.J. in this case and Lord Tucker in *Williams* v. *Unit Construction Co. Ltd.* (*ante*, p. 262) carefully distinguished between the rules as to the passing of the benefit of a covenant and those as to the burden. The point that has been under-emphasised is that the provisions of section 78 must be read in conjunction with section 56 (see *per* Denning L.J., at [1949] 2 K.B. 517, and in *Drive Yourself Hire Co. (London) Ltd.* v. *Strutt* [1954] 1 Q.B. 250, at p. 271). There is no equivalent section to section 56 to deal with the burden of a covenant.

Historically, no doubt, our correspondent is correct in saying that a distinction was drawn between the rules relating to the burden of a covenant and those relating to the benefit and, equally, it was the generally accepted view until the *River Douglas Catchment Board* case that both sections 78 and 79 did not affect the substantive law but were mere conveyancing devices. But it appears to us that the *River Douglas Catchment Board* case and *Williams* v. *Unit Construction Co. Ltd.* have, to say the least, thrown considerable doubt on this view.

We shall have to await further decisions before the position becomes clear, but there is undoubtedly a legitimate desire by conveyancers to make the burden of positive covenants run, particularly in relation to the sale of freehold flats. Mr. T. P. D. Taylor suggests that one method of doing this is to grant in consideration of a premium a long lease for more than 300 years containing (*inter alia*) the positive covenants it is desired to enforce. The lease, however, is not to be subject to any trust or right of redemption in favour of the reversioner nor to be determinable by re-entry if any condition or covenant is broken, nor is rent of any money value to be payable. The lease can then, forthwith, be enlarged into a fee simple under the Law of Property Act, 1925, s. 153, and the resulting fee is subject to all the incidents of the previous lease: subsection (8).

Although this method has its attractions, it seems to be of limited application and the effect of the section is not entirely clear. The absence of a right of re-entry seems to take away the effective means desirable to enforce the positive covenants and it is by no means clear whether subsection (8) is limited to covenants which touch and concern the land. A practical difficulty is explaining to a purchaser and, even more his mortgagee—particularly a building society—the mechanics of the scheme.

PREMIUMS AND INCOME TAX

By Peter E. Whitworth, b.a., Barrister-at-Law

A premium paid on the grant, renewal or assignment of a lease occupies an unusual position in income tax law in that it may swell the tax liability of the payer and not that of the recipient. The premium commonly operates to increase the Schedule A assessment, the tax on which is primarily borne by the tenant, while his right of deduction from the rent is limited to tax thereon at the standard rate (*a*). It follows that where landlord and tenant pay high and low rates of tax respectively, they can usually agree on a premium in lieu of rent at a figure which is to their mutual advantage—subject, of course, to the Rent Restriction Acts. See the examples, *post*, p. 414.

Schedule A gross assessments are made on the "annual value," *i.e.*, broadly speaking the rack rent at which the property is worth to be let by the year (Income Tax Act, 1952, s. 82). This is a question of fact for the general commissioners in whose Division the property lies. Sections 88 and 89 of the Income Tax Act, 1952, contain fairly elaborate provision to ensure that those commissioners are not bound to adopt as the annual value an ostensible rack rent which is not a true one. Among the specific matters in those sections which the commissioners impliedly may take into account are:

(i) provision in the lease for consideration in money other than the rent reserved (s. 88 (1));

(ii) consideration for the demise in money or value not expressed in the lease (s. 88 (3) (a));

(iii) consideration in money or value paid or agreed to be paid by the present or any former tenant on assignment of the lease (s. 88 (3) (c)).

There are many reported cases where the commissioners have adopted a figure higher than the ostensible rent, but only one case dealing with a premium as such. In *Davies* v. *Abbott* (1927) 11 T.C. 575, a lease was granted in June, 1919, for a term of 14 years in consideration of a premium of £200 and an annual rent of £30, the lessee covenanting to do all repairs internal and external (except to the roof). There was an "off" licence at the premises

(*a*) See "The Incidence of Schedule A Tax," *ante*, p. 207.

and the lessee gave covenants designed to preserve this. In July, 1921, the lease was assigned for £700 and re-assigned in December, 1921, for £900. The ultimate assignee appealed against a Schedule A assessment of £123 for 1923–24, contending for an annual value of £37, *i.e.*, the rent reserved plus £7 in respect of the covenant to do landlord's repairs. The gross rating assessment was £35. She argued that the £200 premium did not imply that the rent would otherwise have been greater. It was paid partly for the goodwill of the business but mainly for security of tenure for 14 years. The premiums on assignment were in the nature of private profit to the assignors, paid to them as consideration for the goodwill.

The tax inspector did not seek to support the £123, but contended for an assessment of £68 made up as follows:

Rent reserved	£30
Proportion of premium $\left(\frac{£200}{14}\right)$	£14
Interest on Premium (say)	£10
Landlord's repairs	£14
	£68

On appeal the general commissioners "decided to adopt the terms of the lease," *i.e.*, presumably to disregard the assignment premiums; and they found the annual value to be £68. Rowlatt J. held that they were at liberty to take the lease with or without considering the original premium; they could also have regard to the subsequent premiums, if they thought these affected the matter (*cf.* s. 88 (3) (c)). Equally they might act on *de facto* evidence of the annual value or on their own knowledge. However, it was manifestly wrong, in his view, to divide the premium by 14 and then add interest; they should take only such sum as, being paid annually over 14 years, would with interest give the £200 back again.

The Court of Appeal allowed the Crown's appeal from this direction, approving the principle underlying the two additions, of £14 and £10, made by the inspector in respect of the £200 premium. It seems to have been accepted by the inspector that £700 of the £900 was severable from the premises and attributable to goodwill (Lord Hanworth, 11 T.C., at p. 586; *cf. R.* v. *Barnet, etc., Rent Tribunal, ex p. Millman* [1950] 2 All E.R. 216). The court studiously avoided comment on the correctness of this; it seems that an assessment which took the remaining £700 into account might equally have been upheld. If the inspector was

applying what is now section 88 (3) (c), *i.e.*, was having regard to the premium paid on the last assignment, it is difficult to understand why he divided by 14 instead of by the eleven years remaining unexpired.

Premiums for Flats

The question whether the tenant of a flat which has been let for a term of years at a substantial premium should himself be assessed to Schedule A under ss. 105 and 113, or whether the landlord of the building should be assessed under section 109 (1) (c) (*b*) is the subject of a recommendation of the Royal Commission on the Taxation of Profits and Income, whose report was published in June, 1955 (*c*). Paragraph 915 of the Report says that when the reversion has changed hands it is not right that the lessor's successor in title should be subjected to tax on the full annual value of the flat when he may be receiving a rent which (having regard to the premium paid) falls far short of that value. It recommends that steps be taken to ensure that these cases fall within section 113—by legislation if necessary; but the amending legislation should not apply to leases entered into before its commencement. As stated, *ante*, at p. 217, the Revenue appears to have discontinued already the practice of making assessments on the landlord in such cases.

Premium Versus Rent: Examples

Example 1

L agrees at arm's length with T to grant a seven-year full repairing lease of Blackacre for a consideration to be agreed. The net annual value recently assessed under Schedule A is £300. L pays a combined rate of income tax and surtax, on the top slice of his income, of 18s. 6d. in the £. T pays only 8s. 6d. in the £. Assume that T (having been advised as to the rights to deduct tax) offers the alternative of an annual rent of £300, or a premium of £1,200 payable in seven annual instalments of £171 10s.

(a) *Effect of taking rent at £300 per annum*

T pays	(1) Schedule A Tax £300 at 8s. 6d.	127	10	0
	(2) Rent less tax (£300 less £127 10 0)	172	10	0
	Net cost to T (exclusive of repairs)	£300	0	0

(*b*) See *ante*, p. 217.

(*c*) Cmd. 9474.

L receives net rent	172	10	0
and pays surtax £300 at 10s.	150	0	0
net gain to L	£ 22	10	0

(b) *Effect of taking a premium of £1,200 and no rent*

T Pays (1) Schedule A tax as before	127	10	0
(2) Premium instalment £ $\left(\frac{1200}{7}\right)$	171	10	0
Net cost to T (exclusive of repairs)	£299	0	0
L receives instalment of premium	171	10	0

i.e., L is better off by £149 without any additional cost to T.

If T is carrying on a business at Blackacre, the net cost to him, in each of the two cases, will in effect be reduced by £127 10s. (*d*) by reason of the allowance of the £300 net annual value (or the rent) as a deduction in arriving at his business profit (Income Tax Act, 1952, s. 136). Instalments of premium, unlike rent or net annual value, cannot be deducted as a business expense (*Green* v. *Favourite Cinemas Limited* (1930) 15 T.C. 90).

It is therefore immaterial to T whether he pays the rent or the premium, provided that the total amount paid in premium is not greater (while the tax rate is 8s. 6d.) than $\frac{20}{11\frac{1}{2}}$ of the Schedule A net assessment.

Example 2

The facts are as in Example 1 except that T is a charity occupying Blackacre. The payment of a premium would seem to make T the "owner" of Blackacre within the meaning of section 448 (1) (a), since the Income Tax Act, 1952, s. 448 (2) admits the possibility of a tenant being also the owner (*e*). Accordingly Blackacre would be exempt from Schedule A tax, and (subject to the obligation on the trustees to secure the best possible bargain) it would be immaterial to T whether it paid the whole £300 as rent or as instalment of premium. The net gain to L by means of a premium could then be much higher than the £149 in Example 1. If business tenants were permitted to deduct instalments of premium in arriving at their taxable profit they would be

(*d*) Disregarding earned income relief.
(*e*) And see *ante*, p. 211.

effectively in the same position as charities in this respect, with the result that business premiums would perhaps hardly ever be let at a rent.

Premiums as "Fines"

It is arguable that premiums taken on a demise are subject to separate assessment on the recipient under Case III of Schedule D by virtue of section 182. This section is expressed to apply to a number of specific "hereditaments and heritages" with the following common attributes, namely that—

(i) they consist of profits arising from land not in the possession or occupation of the person to be charged; and

(ii) they are not liable to deduction of tax under sections 173, 174 or 177.

The income tax in respect of the property in these "hereditaments and heritages" is not to be chargeable under Schedule A but under Case III of Schedule D (section 182 (2)). One of the enumerated items is:—

> "fines received in consideration of any demise of lands or tenements (not being parcel of a manor or royalty demisable by the custom thereof)" (section 182 (1) (e)).

Apart from its transfer from Schedule A to Schedule D in 1926, the provision for the separate assessment of "fines" has remained substantially the same since it first appeared in 1805 (45 Geo. 3, c. 49, s. 37). The first Income Tax Act in 1799, provided specifically that assessments on land should include the annual equivalent of fines (39 Geo. 3, cc. 13 and 22). The Act of 1803 (43 Geo. 3, c. 122, s. 31 Schedule A) provided for the separate assessment of an amount equal to the fine divided by the number of years of the term, this amount being deducted from the assessment on the property itself. That provision against double assessment was succeeded in 1805 by what is now section 182 (6) of the 1952 Act which empowers the commissioners to discharge, from their assessment under that section, any part of the fines which has been

> "applied as productive capital on which a profit has arisen or will arise which is otherwise chargeable for the year for which the assessment is made."

In *Mostyn* v. *London* [1895] 1 Q.B. 170; 3 T.C. 294, the relief was refused where the fines had merely been deposited with a bank at interest, pending permanent investment.

The scope of what is now section 182 (1) (e) was discussed in the Court of Appeal in *Utting & Company Limited* v. *Hughes*

[1939] 2 K.B. 231; 23 T.C. 174, which concerned *inter alia* premiums received by a speculative builder in consideration of 99-year leases. The Crown claimed to include the premiums as trading receipts. Clauson L.J., delivering the judgment of the court, said that, but for the transfer from Schedule A to Schedule D in 1926, fines which were apparently within (now) section 182 (1) (e) would nevertheless not be separately assessable since they would be covered by the principle established in *Salisbury House Estate Limited* v. *Fry* [1930] A.C. 432; 15 T.C. 266, *i.e.*, the Schedule A assessment on the land itself would exhaust the taxability of the property in that land. He held that the transfer to Schedule D gave the Crown the option either to treat fines received by speculative builders as trading receipts, within Case I, or to assess them under Case III.

The Crown had argued that the purview of what is now section 182 (1) (e) was very narrow and must be limited to fines on renewal of renewable leases, whether renewable by covenant or by custom (*f*). Without giving a final view on this, Clauson L.J. observed ([1939] 2 K.B., at p. 245):

> "It may very likely be the case that fines of this character were very familiar in 1805 and that at that date such premiums as the present were either unknown or very unusual. It does seem to be the fact that it has never been the practice to construe the word 'fine' in the Rule as covering such premiums as the present. The fact however remains that in its language the Rule is not confined to demise by way of renewal of the former lease, and that no sound ground seems to exist for distinguishing between a fine on a demise and a premium on a demise. It would be attractive in such a case, but scarcely legitimate, to fall back upon the maxim *communis error facit legem*."

"Fine" is defined in the Shorter Oxford English Dictionary as "a sum of money paid by the tenant on the commencement of his tenancy in order that his rent may be small or nominal."

It is not unknown for the Inland Revenue to make contradictory submissions in different cases (*cf. Sharkey* v. *Wernher* [1954] Ch. 713, 724). However, it seems that there has as yet been no departure from the view expressed by the Inland Revenue in the *Utting* case. The report of the Committee on the Taxation of Trading Profits (*g*) contains in paragraph 216 an argument intended

(*f*) *Cf. Att.-Gen.* v. *Scott* (1873) 1 T.C. 55; 28 L.T. 302; *Mostyn* v. *London* [1895] 1 Q.B. 170; 2 T.C. 294.
(*g*) (1951) Cmd. 8189.

to show the impracticability of taxing a lessor in respect of a premium received by him. Again in 1955 the majority of the Royal Commission on the Taxation of Profits and Income, dealing with the same topic, expressed the view that

> " no satisfactory method of taxing the recipient is ever likely to emerge " (*h*).

and that

> " a reversal of the (present) system could not be introduced without an accompaniment of complications that would be distasteful to the Revenue and the taxpayer alike for the idea of treating premiums as income cannot be made to fit conveniently into a system of annual progressive tax " (*i*).

Neither report mentioned section 182 (1) (e) or the dictum of Clauson L.J. quoted above.

Premiums and " Excess Rents "

The last " quinquennial " Schedule A revaluation was for 1936–37, and the next one may be in force by 1957–58 following the rating revaluation. When postponement of the revaluation was decided on in 1940, the Finance Act of that year, by sections 15 and 16 (now the Income Tax Act, 1952, sections 175 and 176) provided for Schedule D, Case VI assessments on lessors in respect of excess rents. Like much of that unfortunate Act, these provisions raise difficult problems of construction. Section 175, which deals with the common case of the letting of a single unit of assessment, provides for the computation of a net annual value determined on Schedule A lines by reference to the rent " and the other terms of the lease." The Schedule A net annual value as actually assessed is to be deducted from this notional net annual value and the balance is the excess rent.

The question arises whether premiums should be brought into account in computing the excess rent, on the *Davis* v. *Abbott* principle. At first, premiums were in practice ignored; later they were taken into account where they were payable by instalments or the term of the lease was very short. It is understood however that the Inland Revenue now no longer seek to bring premiums into account.

Although it is arguable that premiums ought to be taken into account under section 175, the legislature is unlikely to have intended this result. Arguments against it are as follows:

(*h*) (1955) Cmd. 9474, para. 868.
(*i*) Cmd. 9474, para. 870.

(a) The rubric to section 175 speaks of excess *rents*;

(b) It is a *sine qua non* of liability, whether under section 175 or section 176, that "rent" be payable for the year of assessment;

(c) A premium is not rent (*Taylor* v. *Evans* (1856) 1 H. & N. 101; *King* v. *Cadogan* [1915] 3 K.B. 485, 492); even if paid in instalments (*Green* v. *Favourite Cinemas Limited* (1930) 15 T.C. 90; *Regor Estates Limited* v. *Wright* [1951] 1 K.B. 689);

(d) Premiums are clearly excluded from section 176 computations and there is no apparent reason why section 175 should differ in this respect;

(e) The reference in section 175 to the "other terms" of the lease was probably intended to cover stipulations as to the allocation between landlord and tenant of periodical outgoings;

(f) To include a premium would switch the liability for the premium element from the tenant to the lessor, who may never have received it, *e.g.*, where it was paid on an assignment of the lease;

(g) A tenant for life of settled land might, as "lessor," have to pay income tax and surtax in respect of a capital sum which had been paid to the trustees to be held for the benefit of remaindermen;

(h) If a premium is indeed a "fine" within section 182 (1) (e) it is already covered by Case III of Schedule D.

As regards (g), there is of course no provision in the Settled Land Act, 1925, which specifically directs recoupment out of capital of the tax borne by the tenant for life on the annual equivalent of a premium. It is arguable however that the *Re Pettit* (*k*) principle, recently extended by Wynn-Parry J. in *Re Pelly* [1955] 3 All E.R. 483, ought to be applicable in reverse.

(*k*) [1922] 2 Ch. 765.

EXCUSABLE BREACHES OF TRUST

By L. A. Sheridan, Barrister-at-Law

The Statutory Provisions

Equity provides varying standards of performance for its various duties of trusteeship. Sometimes a trustee must be businesslike, sometimes prudent, sometimes reasonable. But sometimes the acts he must do are prescribed, and if he does not do them, but does something else, however reasonable, prudent or businesslike, there is a breach of trust. It was principally to meet this last kind of situation, in which honest and diligent people might find themselves liable, that section 61 of the Trustee Act, 1925, provided—

> "If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same."

This substantially re-enacts section 3 of the Judicial Trustees Act, 1896.

In Northern Ireland and the Republic of Ireland, there is no corresponding provision except for section 51 (4) of the Irish Land Act, 1903:—

> "In the case of all proceedings in relation to any lands sold under the Land Purchase Acts, or any charges thereon, or any moneys realised thereby, if it appears . . ." [then follow provisions corresponding to section 61 of the Act of 1925].

Some other common law countries give trustees a similar opportunity of relief, while yet others have no such legislation at all.

Protection of a similar character is also accorded by section 448 of the Companies Act, 1948—

> "(1) If in any proceedings for negligence, default, breach of duty or breach of trust against an officer of a company or a person employed by a company as auditor (whether he is

or is not an officer of the company) it appears . . . [then follow provisions corresponding to section 61 of the Act of 1925].

"(2) Where any such officer or person aforesaid has reason to apprehend that any claim will or might be made against him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the court for relief, and the court on any such application shall have the same power to relieve him as under this section it would have had if it had been a court before which proceedings against that person for negligence, default, breach of duty or breach of trust had been brought."

This replaces section 372 of the Companies Act, 1929, which was substantially the same. Before that, the Companies (Consolidation) Act, 1908, s. 279, had governed the matter, but this corresponded only to section 448 (1) of the Act of 1948.

In the Republic of Ireland, the Companies (Consolidation) Act, 1908, is still in force. In Northern Ireland, the Companies Act, 1932, s. 327, though differently drafted, is similar in effect to section 448 of the English Act of 1948.

Interpretation: General Principles

The legislation does not alter the law as to what constitutes a breach of trust (or duty covered by the Companies Acts). In *Re Stuart* (*a*) Stirling J. said: "The effect of section 3 of the Judicial Trustees Act, 1896, appears to me to be this. The law as it stood at the passing of the Act is not altered, but a jurisdiction is given to the court under special circumstances, the court being satisfied as to the several matters mentioned in the section, to relieve the trustee of the consequences of a breach of trust as regards his personal liability." One objection, then, to laying down general principles as to when relief will be given is that to do so might be to modify the law as to breach of trust, or to make a mockery of it. If a court stated that in such and such circumstances relief would be given, then to all intents and purposes those circumstances would no longer be accountable as a breach of trust.

Another objection to the laying down of general principles in this branch of the law is that factual matters are apt to get entangled in rules of law. Yet facts covered in one judgment may vary subtly in a new case, while a judge lacking in adventurous spirit might feel himself bound by the earlier precedent.

(*a*) [1897] 2 Ch. 583, 590.

The danger is of getting back to a situation in which a judge who thinks a trustee ought fairly to be excused feels himself inhibited by authority from excusing the breach.

Whatever the operative reason, judges certainly have declined to rule the future when deciding cases under this legislation. In *Re Turner* (*b*) Byrne J. said: "It would be impossible to lay down any general rules or principles to be acted on in carrying out the provisions of the section, and I think that each case must depend upon its own circumstances."

Nevertheless, cases are reported. In order to prophesy what future courts will do—in order to advise a client or prepare an argument—decided cases may be helpful as showing the general judicial temper when faced with this legislation, the meanings which have been attached to the words of the Acts, and the type of circumstances in which relief has been granted or refused.

For example, nearly all the English cases demonstrate that the judges are prepared to use the section freely, and welcome it as a release from having to hold people liable for having failed to live up to unattainable ideals. Romer J. was formulating the typical attitude when he said (*c*): "I strongly desire not to narrow the effect of the Act of 1896—I think each case must be dealt with according to its circumstances." The same free approach pervades the cases decided in Canadian courts. In Ireland, on the other hand, no such view is discernible. Indeed, the *Irish Law Times Reports* seem to have made a scoop with *Jones* v. *Fitzgerald* (*d*), which appears to be the only reported Irish case where relief was claimed. Relief was refused, and Johnston J. said (*e*): "The section of course must be acted upon freely and fairly; but in applying it in any particular case I must say I would rather err on the side of caution than on the side of courage." He gave no reason for his strange preference, nor why there was need for error at all.

Three Elements: Honesty, Reasonableness, Excusability

Obviously, a trustee cannot claim relief unless he has been honest. That must be obvious even to dishonest trustees, for

(*b*) [1897] 1 Ch. 536, 542. A similar view is expressed in *Re Stuart* [1897] 2 Ch. 583 (Stirling J.); *Re Kay* [1897] 2 Ch. 518 (Romer J.); *Re Lord De Clifford's Estate* [1900] 2 Ch. 707 (Farwell J.); *Holland* v. *German Property Administrator* [1937] 2 All E.R. 807 (Court of Appeal); *Jones* v. *Fitzgerald* (1930) 65 I.L.T.R. 185 (Johnston J., Ireland).

(*c*) *Re Kay* [1897] 2 Ch. 518, 524.

(*d*) (1930) 65 I.L.T.R. 185.

(*e*) 65 I.L.T.R. 190.

they do not bother to apply. In only one reported case (*f*) has relief been refused for what was held to be dishonesty. But that honesty is essential is established by judicial authority (*g*) as well as by the legislation itself and by social policy. For in some cases the honesty of the trustee has been challenged, and the judges have analysed the facts and found honesty before granting relief, or before refusing it on some other ground. No authoritative definition of honesty has been propounded, but it seems to denote being motivated by the interests of the trust.

Honesty, however, is not enough alone. One can be honest and unreasonable. Some reasonableness must be shown over and above honesty. That is established by many English cases concerning trustees (*h*), and implicit in many other decisions (*i*). It is the position in England with regard to relief under the Companies Act (*k*). It has been laid down in trust decisions on similar relieving statutes in force in Ireland (*l*), Ontario (*m*), the Straits Settlements (*mm*), Tasmania (*n*), and Victoria (*o*). Furthermore, in *Re Stuart* (*p*) Stirling J. held that the burden lay upon the trustee to show that he acted reasonably.

(*f*) *Re Second East Dulwich 745th Starr Bowkett Building Soc.* (1899) 79 L.T. 726 (Kekewich J.).

(*g*) *Re Grindey* [1898] 2 Ch. 593 (Court of Appeal), 602 (*per* Chitty L.J.); *Re Windsor Steam Coal Co. (1901), Ltd.* [1929] 1 Ch. 151 (Court of Appeal), 164 (*per* Lawrence L.J.); *Re J. Franklin & Son, Ltd.* [1937] 4 All E.R. 43 (Crossman J., a case on the Companies Act); *Perrins* v. *Bellamy* [1899] 1 Ch. 797 (Court of Appeal, implicitly); *Jones* v. *Fitzgerald* (1930) 65 I.L.T.R. 185 (implicitly).

(*h*) *Re Turner* [1897] 1 Ch. 536 (Byrne J.); *Wynne* v. *Tempest* (1897) 13 T.L.R. 360 (Romer J.); *Re Roberts* (1897) 76 L.T. 479 (Court of Appeal); *Re Stuart* [1897] 2 Ch. 583 (Stirling J.); *Re Kay* [1897] 2 Ch. 518 (Romer J.); *Chapman* v. *Brown* [1902] 1 Ch. 785 (Court of Appeal); *Re Tollemache* [1903] 1 Ch. 457 (Kekewich J.) and [1903] 1 Ch. 955 (Court of Appeal); *Shaw* v. *Cates* [1909] 1 Ch. 389 (Parker J.); *Re Dive* [1909] 1 Ch. 328 (Warrington J.); *Re Windsor Steam Coal Co. (1901), Ltd.* [1929] 1 Ch. 151 (Court of Appeal, *per* Lawrence L.J. at p. 164); *Marsden* v. *Regan* [1954] 1 W.L.R. 423 (Court of Appeal).

(*i*) *Re Barker* (1898) 77 L.T. 712 (North J.); *Re Grindey* [1898] 2 Ch. 593 (Court of Appeal); *Perrins* v. *Bellamy* [1899] 1 Ch. 797 (Court of Appeal); *Re Lord De Clifford's Estate* [1900] 2 Ch. 707 (Farwell J.); *Williams* v. *Byron* (1901) 18 T.L.R. 172 (Byrne J.); *Re Smith* (1902) 86 L.T. 401 (Kekewich J.); *Davis* v. *Hutchings* [1907] 1 Ch. 356 (Kekewich J.); *Re Mackay* [1911] 1 Ch. 300 (Parker J.); *Palmer* v. *Emerson* [1911] 1 Ch. 758 (Eve J.); *Re Greenwood* (1911) 105 L.T. 509 (Eve J.); *Re Allsop* [1914] 1 Ch. 1 (Court of Appeal); *Re Brookes* [1914] 1 Ch. 558 (Astbury J.); *Re Clark* (1920) 150 L.T.J. 94 (Eve J.).

(*k*) *Re J. Franklin & Son, Ltd.* [1937] 4 All E.R. 43 (Crossman J.).

(*l*) *Jones* v. *Fitzgerald* (1930) 65 I.L.T.R. 185 (Johnston J.).

(*m*) *Smith* v. *Mason* (1901) 35 Can.Ab. 235; *Dover* v. *Denne* (1902) 35 Can. Ab. 235; *Patchell* v. *Raikes* (1904) 35 Can.Ab. 235; *McDonald* v. *Trusts and Guarantee Co.* (1910) 35 Can.Ab. 236; *Trost* v. *Cook* (1920) 56 D.L.R. 305; *Re Patton* [1931] 3 D.L.R. 544; *Re Bangham* (1933) 35 Can.Ab. 235.

(*mm*) *Khoo Tek Keong* v. *Ch'ng Joo Tuan Neoh* [1934] A.C. 529.

(*n*) *Fouche* v. *Superannuation Fund Board* (1952) 88 C.L.R. 609.

(*o*) *National Trustees Co. of Australasia, Ltd.* v. *General Finance Co. of Australasia, Ltd.* [1905] A.C. 373.

(*p*) [1897] 2 Ch. 583.

What is reasonable in any particular circumstances is naturally a question of fact. But the inquiry might be hampered by the absence of an accepted criterion of reasonableness. In fact, prophecy of what judges will do is to some extent hampered by not being quite sure what is meant by reasonableness, but the judges do not seem to be at any loss. Whether by instinct or from their own experience they appear to be forthright and certain on the whole in their assessments.

Some guidance on reasonableness can be gleaned from the cases. The standard would seem to be the conduct of a reasonable man or prudent man of business acting in the transaction concerned rather than that of the prudent trustee (which might be higher). The weight of authority is in favour of this view, notwithstanding the statement by Chitty L.J. in *Re Grindey* (*q*): "The section is not easy to construe; but in my opinion, a narrow construction ought not to be put upon it, having regard to the language used and the general object in view, which is plain; namely, the relief of honest trustees who have acted reasonably. 'Reasonably' must mean reasonably as trustees." What is reasonable in a particular dealing may vary with the value of the property involved (*r*). A summons for directions may be indicated in the circumstances if the trust fund is ample, but other things being equal in the same circumstances it may be reasonable not to apply for directions when a small sum is involved (*s*). Again, it is fair to ask whether the trustee would have acted as he did in his own affairs. A finding that he would not has been held to negative reasonableness (*t*), but in *Re Lord De Clifford's Estate* (*u*) Farwell J. thought that such a finding would negative honesty.

One might think at first blush that an honest and reasonable trustee always ought fairly to be excused. The element that he ought fairly to be excused is, however, grammatically capable of being a separate one, and there are cases where relief has been refused to an honest and reasonable trustee (*a*).

(*q*) [1898] 2 Ch. 593, 601.

(*r*) *Re Allsop* [1914] 1 Ch. 1 (Court of Appeal: at p. 13 *per* Cozens-Hardy M.R., at p. 15 *per* Hamilton L.J., and at p. 21 *per* Swinfen Eady L.J.).

(*s*) *Cf. Re Grindey* [1898] 2 Ch. 593 (Court of Appeal: *per* Lindley M.R. at pp. 598–600, Chitty and Collins L.JJ. agreeing).

(*t*) *Re Turner* [1897] 1 Ch. 536 (Byrne J.); *Re Stuart* [1897] 2 Ch. 583 (Stirling J.); *Re Dive* [1909] 1 Ch. 328 (Warrington J.); *Shaw* v. *Cates* [1909] 1 Ch. 389 (Parker J.).

(*u*) [1900] 2 Ch. 707, 716.

(*a*) So held in *Davis* v. *Hutchings* [1907] 1 Ch. 356 (Kekewich J.). Supported by dicta in *Re Windsor Steam Coal Co. (1901), Ltd.* [1929] 1 Ch. 151 (Court of Appeal, *per* Lawrence L.J. at p. 164); *Marsden* v. *Regan* [1954] 1 W.L.R. 423 (Court of Appeal, *per* Evershed M.R. at p. 434). So held on the Companies Act in *Re J. Franklin & Son, Ltd* [1937] 4 All E.R. 43 (Crossman J.). So held as to Ontario trustees in *Whicher* v *National Trust Co.* (1910) 35 Can. Ab.

Doubtful Breaches: "Is or may be"

Section 61 of the Trustee Act, 1925, refers—and there are similar references in the other statutes—to a trustee who "is or may be personally liable for any breach of trust." It seems clear that this is intended to empower the court to grant relief even when doubtful whether there has been a breach of trust or not. If a trustee has been found honest and reasonable and deserving of excuse, then the court can avoid tackling devious questions of law whether his acts have been technical breaches of trust or not. The trustee is saved the grotesque task of proving that he is in breach of trust in order to qualify for relief (*b*).

An ingenious attempt was made in *Re Tollemache* (*c*) to construe the relieving legislation as conferring on the court a power to authorise trustees in advance to do what would otherwise amount to a breach of trust. Kekewich J. answered (*d*) this contention in words which were approved by the Court of Appeal (*e*): "The point made is that, inasmuch as the court has authority to excuse a trustee from liability for a breach of trust committed, or, in other words, to bind the beneficiaries to accept what was done as if it were no breach of trust at all, therefore the court must have power to exercise that authority by anticipation, and to excuse a trustee from liability for a breach of trust contemplated. I am not convinced. The statutory provision, though, if I may venture to say so, not a good example of clear and careful legislation, has undoubtedly proved useful; but to extend it as proposed by implication, and to say that the court can sanction any dealing with trust property, however discordant from the trusts declared, provided only it be honest—whatever that may mean—and reasonable, would be a subversion of principle. If the legislature intends to confer that power on the court, it must do so in express and unambiguous terms."

"May be" has thus been interpreted as indicating doubt, and not futurity. It follows that whenever a breach of trust is alleged, and relief is claimed, the court need never determine the question

234; *Re Nicholls* (1913) 14 D.L.R. 244. Supported by dicta as to Straits Settlements trustees in *Khoo Tek Keong* v. *Ch'ng Joo Tuan Neoh* [1934] A.C. 529. So held as to trustees in Victoria in *National Trustees Co. of Australasia, Ltd.* v. *General Finance Co. of Australasia, Ltd.* [1905] A.C. 373.

(*b*) See *Re Roberts* (1897) 76 L.T. 479 (Court of Appeal); *Re Grindey* [1898] 2 Ch. 593 (Court of Appeal); *Re Smith* (1902) 86 L.T. 401 (Kekewich J.); *Re Tollemache* [1903] 1 Ch. 457 and 955 (Court of Appeal); *Re Houghton* [1904] 1 Ch. 622 (Kekewich J.); *Re Allsop* [1914] 1 Ch. 1 (Court of Appeal, *per* Swinfen Eady L.J.); *Re Pawson's Settlement* [1917] 1 Ch. 541 (Sargant J.); *Elliot* v. *Colter* (1919) 19 Can.Ab. 1066 (Ontario).

(*c*) [1903] 1 Ch. 457 and 955.

(*d*) [1903] 1 Ch. 466.

(*e*) [1903] 1 Ch. 955.

of law whether a breach of trust has been committed unless it has first decided to refuse relief. The actual order, however, in which courts tackle questions raised by cases of this kind varies.

Kinds of Breaches Excused

Relief from liability has been claimed by and granted to trustees, personal representatives, and company directors in diverse circumstances. Some sort of classification is nevertheless possible.

Investment

By far the most cases in which relief has been sought are those in which something has gone wrong with the investments.

In *Re Turner* (*f*), two trustees made an investment in breach of trust. One was a linen draper, and he relied on the other, who was a solicitor. Byrne J. held that this was not enough to excuse the draper, saying that he did not act as he would probably have acted had the transaction been part of his own affairs.

In *Re Stuart* (*g*), a trustee advanced money on four mortgages. In respect of the first two, the valuation had not stated the value of the property. In the third, more than two-thirds of the value was advanced. The fourth was a second mortgage, and no valuation was obtained. The trustee had done all these things partly in reliance on a person who had long been trusted as his solicitor by the testator. Stirling J. refused relief. He said that a man would not have so acted in his own affairs. He also took the view that the statutory rules as to mortgages were to be taken as the guide of reasonableness, and that in the absence of special circumstances put forward as explaining why they were not complied with there would be no relief.

Another case of misplaced reliance was *Re Barker* (*h*). There an executrix and trustee of her husband's estate did not sell unauthorised investments until fourteen years after the testator's death, and a loss of £1,600 odd was incurred. She had acted on the advice of a commission agent who had been a friend and adviser of her husband's. North J. held that although the trustee had been honest, what she had done was not reasonable. She ought to have consulted a solicitor. It was not enough to show that she had acted as she would in her own affairs, though that was a point in her favour.

Khoo Tek Kheong v. *Ch'ng Joo Tuan Neoh* (*i*) was a decision

(*f*) [1897] 1 Ch. 536.
(*g*) [1897] 2 Ch. 583.
(*h*) (1898) 77 L.T. 712.
(*i*) [1934] A.C. 529.

of the Judicial Committee of the Privy Council on the relieving provisions—similar to the English ones—contained in the Trustees Ordinance, 1929 (Straits Settlements), s. 60. A will provided that trustees might invest in such investments as they in their absolute discretion thought fit. They lent money at interest but without security. The opinion of the Board, delivered by Lord Russell of Killowen, was, first, that the loan was not an investment and so was a breach of trust; and secondly, that there should be no relief as it was not reasonable. The fact that the trustees made this loan because it was the testator's practice did not show reasonableness, but rather that the trustees did not consider whether it was prudent or not.

It can thus be seen that in all these cases where a trustee relied on a co-trustee, or on the testator's solicitor, or on some other adviser of the testator's, or on the testator's own course of conduct, relief was refused. The honest taking of what is conceived to be reliable advice will be no ground for excuse if the court believe a prudent man of business would have acted differently in ordering his own affairs. That test of reasonableness is quite severe. This line of authority is supported yet again by *Re Dive* (*k*), where a trustee relied on his own solicitor. This trustee had power to invest in real securities under his own control. He in fact lent on contributory mortgages of underleases held at substantial rents. He advanced £2,000, and eventually he and his co-mortgagee had to sell for £500. The mortgagor was a builder. The security was introduced to the trustee's solicitor by a surveyor. The solicitor recommended the investment to the trustees and acted as solicitor throughout the transaction. On the solicitor's suggestion, the trustee appointed the surveyor who introduced the security to make a valuation (which turned out to be unsatisfactory in some ways). The surveyor advised that it was a speculative security, but that it formed a good security for £4,000. The trustee acted on the solicitor's advice in making the investment. Warrington J. held that there had been a breach of trust, and declined to grant relief. Although the trustee had acted honestly, he had not been reasonable. It was obvious that a contributory mortgage was not under his own control. The valuation and the whole circumstances of the introduction of the security should have aroused his suspicions. The trustee (said the learned judge) had not acted as he or any other ordinary man of business would have acted in his own affairs if he had been seeking a secure investment (*l*).

(*k*) [1909] 1 Ch. 328.
(*l*) For other cases of misplaced reliance, see pp. 429–431, *post*.

Cases of carelessness fare no better. In *Chapman* v. *Browne* (*m*), trustees of a marriage settlement had power to invest (*inter alia*) in real securities in Ireland with the consent of husband and wife. They invested without the wife's consent in a third sub-mortgage of land in Ireland, without taking legal advice as to the propriety of the investment. They advanced £5,000, and recovered £75 1s. net. For this breach of trust the Court of Appeal, whose judgment was read by Romer L.J., would give no relief.

Jones v. *Fitzgerald* (*n*) which turned on the Irish Land Act, 1903, s. 51 (4), was a sorry tale. The trustees left capital in the hands of the tenant for life for investment, although they had good cause to believe he was not a businesslike man. The tenant for life invested in unauthorised securities, whose eventual depreciation culminated in a substantial loss. Johnston J. held that the trustees had not acted reasonably and refused to relieve them from liability.

Fouche v. *Superannuation Fund Board* (*o*) was a case on the relieving provisions in section 50 of the Trustee Act, 1898–1941 (Tasmania). On the advice of one of their number, a solicitor, trustees lent money on mortgage by progress payments to a person building an hotel. They had a valuation, but made only cursory inquiries whether the mortgagor was in a position to raise the rest of the money he required for the project, and whether the hotel would be a profitable venture when completed. In fact, the mortgagor was in a bad financial state, and the investment was hazardous. The High Court of Australia held that there had been a breach of trust for which relief would not be given, as the trustees, though honest, had not acted reasonably.

Another class of case is that where the trustees put a wrong construction on the terms of the trust instrument. In *Re Grindey* (*p*) the executors and trustees of a will were two farmers and a bank manager. The will said that the trustees were to have an absolute discretion as to sale or conversion, and there was no provision as to calling in of debts. The estate included a debt of £166 upon a promissory note payable on demand. The debtor was in good credit and a highly respectable position. The executors did not demand or receive principal or interest, and the debtor subsequently died insolvent. The Court of Appeal relieved the

(*m*) [1902] 1 Ch. 785.
(*n*) (1930) 65 I.L.T.R. 185. And see *Perdue* v. *Perdue* (1928) 35 Can.Ab. 238 (Ontario).
(*o*) (1952) 88 C.L.R. 609.
(*p*) [1898] 2 Ch. 593. *Cf. Re Mackay* [1911] 1 Ch. 300 (p. 431, *post*); *Perrins* v. *Bellamy* [1899] 1 Ch. 797 (p. 432, *post*); *Henning* v. *Maclean* (1900) 19 Can.Ab. 1064 (p. 436, *post*).

executors from liability. It was reasonable for them to think on reading the will that they did not have to call the debt in. It was also reasonable not to apply to the court for directions when such a small sum was involved. Indeed, they might even have been right in their construction of the will: there was no need to decide whether a breach of trust had been committed or not.

Non-compliance with the statutory and equitable rules as to advancing money on mortgage is the last class of investment case to be considered here. In *Shaw* v. *Cates* (*q*), trustees having power to invest in real securities advanced money on mortgage of freehold land without having a valuation to comply with section 8 of the Trustee Act. There was a valuation, but it was unsatisfactory. The valuer was employed by the mortgagor. He was employed by the trustees after their solicitors had made inquiries about him. The trustees did not give the valuer full instructions. Finally, the advance was not made in accordance with the valuer's recommendations. Parker J. held that there was a breach of trust, and that no relief should be accorded. The trustees, though honest, were not reasonable because they did not take all the precautions which a prudent man acting in his own affairs might be expected to have taken.

In *Palmer* v. *Emerson* (*r*), on the other hand, the trustees fared much better. They had power to invest in real securities, and the complaint arose out of an advance of more than half its value on a mortgage of business premises. The trustees had no independent valuation, but relied on a slightly earlier valuation by a highly competent valuer. The property depreciated and could not be realised. Eve J. held that there had been no breach of trust, but that if there had been, the trustees had acted honestly and reasonably and were entitled to relief. All the circumstances suggested a good security, and a further valuation would have meant delay. Section 8 of the Trustee Act, in the learned judge's opinion, is a relieving section, not one imposing a duty. If a trustee does not comply with it, he may still obtain relief as having been honest and reasonable (*s*).

Leaving Property in Other Hands

One can begin this class, too, with the misplaced reliance cases (*t*). In *Re Second East Dulwich 745th Starr Bowkett Building*

(*q*) [1909] 1 Ch. 389.
(*r*) [1911] 1 Ch. 758.
(*s*) Other investment cases are *Re Tollemache* [1903] 1 Ch. 457 and 955; *Re Nicholls* (1913) 14 D.L.R. 244 (Ontario); *Duthie* v. *Gallagher* [1930] 2 D.L.R. 582 (British Columbia).
(*t*) For other such cases, see pp. 426–7, *ante*.

Soc. (*u*), a trustee who was a poor tradesman entrusted everything to his co-trustee, who was experienced in such matters. Too much so, apparently, for he absconded. Kekewich J. not only refused the tradesman relief, but had these hard words to say (*a*): "It seems to me that a man who accepts such a trusteeship, and does nothing, swallows wholesale what is said by his co-trustee, never asks for explanation, and accepts flimsy explanations, is dishonest."

Carelessness might be said to have been present in that case, and certainly it was present in *Wynne* v. *Tempest* (*b*). A trustee allowed his solicitor to receive the proceeds of sale of investments from the broker. This trustee relied on the solicitor in the trust business. The solicitor told the trustee that the money had been banked, but he did not say at what bank, nor did the trustee inquire. The trustee therefore neither looked at the pass book nor inquired at the bank. A year after receipt of this trust money the solicitor died insolvent. The trustee had done nothing during that time. Romer J. would give no relief, saying the trustee was neither reasonable nor fairly to be excused.

Carelessness also featured in *Williams* v. *Byron* (*c*), which involved three transactions. (1) Proceeds of sale of investments were paid to the solicitors to a trust, and part was left with them without security. There was no evidence of any inquiry by the trustees as to what had become of the balance. (2) The trustees entered into a mortgage without a proper valuation—*viz.*, without an independent and properly instructed valuer. They made no further investigations as to the property, they made no inquiry as to the means or position of the mortgagor, and they never asked to see the mortgage or title deeds. They left everything to their solicitor, who defrauded them. (3) The trustees wished to buy stock. Instead of instructing a broker, they instructed their solicitor to do it, and gave him a cheque. He defrauded them again. Byrne J. held that there were three breaches of trust, for which no relief would be given. The trustees had acted honestly but not reasonably. The learned judge said (*d*): "The provisions of the section were intended to enable the court to excuse breaches of trust where the circumstances of the particular case show reasonable conduct, but it was never meant to be used as a sort of general indemnity clause for honest men who neglect their duty, and if it were so applied as to shake or weaken the clear rules of the court in reference to the conduct of trust matters.

(*u*) (1899) 79 L.T. 726.
(*a*) 79 L.T. 727.
(*b*) (1897) 13 T.L.R. 360. For other carelessness cases, see pp. 423–4, *ante*.
(*c*) (1901) 18 T.L.R. 172.
(*d*) 18 T.L.R. 176.

it would, I believe, result in greater evils than those it was intended to remedy."

In these cases, then, as in the investment cases, trustees have been denied relief when they have suffered loss either through relying on someone else for the performance of their trust duties, or where there has been some element of carelessness. But even a careful trustee may be defrauded, as in *Re Smith* (*e*). There, a trustee living in Reigate employed London solicitors to act as her agents in the trust, the trust account being kept at a London bank. The solicitors kept the cheque and pass books, drawing cheques and then sending them to the trustee for signature as required. A clerk (well known to the trustee) to the solicitors by fraud obtained the trustee's signature to cheques which he cashed, after which he absconded. Everyone, except the clerk, was honest. Kekewich J. held that if there was a breach of trust, the trustee had acted reasonably and was entitled to relief (*f*).

Paying Creditor with No Claim

In this sphere relief is easier to come by. In *Re Lord De Clifford's Estate* (*g*), executors, knowing that a lot of money was needed for payment of debts and other purposes of administration, paid large sums to their solicitors, who said they were required for these purposes. Shortly before the close of administration, the solicitors went bankrupt, and £530 odd had not been spent by them on administration. One of the executors had also employed the same solicitors personally and lost money. Farwell J. granted relief. In *Re Mackay* (*h*), a testator who gave property on trust directed that his "trustees and executors may employ agents to act for them under this will and each of them shall be indemnified out of the trust estate against the acts and omissions of such agents or any co-executor or co-trustee to whom he may delegate any of the trust duties." A trustee employed a solicitor, at whose request he signed cheques payable to the solicitor, who said they were required for payment of death duties. The solicitor misappropriated the cheques. There was no doubt that the trustee was honest. Parker J. held that (1) there was no need to decide whether a breach of trust had been committed or not, and (2) if

(*e*) (1902) 86 L.T. 401.

(*f*) Further cases of property left by trustees in other hands are *Jones* v. *Fitzgerald* (1930) 65 I.L.T.R. 185 (for facts, see p. 428, *ante*); *Trost* v. *Cook* (1920) 56 D.L.R. 305 (Ontario); *Perdue* v. *Perdue* (1928) 35 Can.Ab. 238 (Ontario); *Maritime Trust Co.* v. *Eastern Trust Co.* [1949] 2 D.L.R. 497 (New Brunswick).

(*g*) [1900] 2 Ch. 707.

(*h*) [1911] 1 Ch. 300. *Cf. Re Grindey* [1898] 2 Ch. 593 (p. 428, *ante*); *Perrins* v. *Bellamy* [1899] 1 Ch. 797 (p. 432, *post*); *Henning* v. *Maclean* (1900) 19 Can.Ab. 1064 (p. 436, *post*).

there had been a breach relief would be granted as it was reasonable for the trustee to conclude, having regard to the terms of the will, that he could safely pay the money to the solicitor.

In another class of case, no agent of the trustee is interposed. In *Re Houghton* (*i*) an executor, after making inquiries, paid a claim, which was subsequently disputed by the beneficiaries. Kekewich J. held that if there had been a breach of trust (which he held there had not) the executor was entitled to relief. In *Re Windsor Steam Coal Co. (1901), Ltd.* (*k*), the liquidator of a company settled a claim after being advised by the solicitor to a shareholder that the claim was valid. He did not consult the court, which later held that there was no claim. A contributory sued the liquidator. The Court of Appeal held that, assuming the liquidator was a trustee, he was not entitled to relief. Lord Hanworth M.R. said (*l*) it was because he wilfully omitted to obtain the directions of the court. Lawrence L.J. put it on the ground that he was a paid trustee who had distributed to the wrong beneficiary (*m*). Russell L.J. rested his decision (*n*) on the facts, without saying which facts, and agreed with both his brethren (*o*).

Mistaking Powers

In *Perrins* v. *Bellamy* (*p*), the trustees of a settlement erroneously thought they had a power of sale, and they sold leaseholds in a way which would have been proper under the usual power. The income was in consequence diminished. Their solicitor had told the trustees they had this power. A surveyor had told them it was undesirable to retain the properties, and on the strength of that the solicitor advised a sale. The Court of Appeal relieved the trustees.

Failure to Call in Debt

In *Re Roberts* (*q*), the executor of a solicitor did not sue the solicitor's client for costs. He said it was because there was an arrangement between the solicitor and the client that the latter

(*i*) [1904] 1 Ch. 622.
(*k*) [1929] 1 Ch. 151.
(*l*) [1929] 1 Ch. 161.
(*m*) [1929] 1 Ch. 163–5. *Cf. National Trustees Co. of Australasia, Ltd.* v. *General Finance Co. of Australasia, Ltd.* [1905] A.C. 373 (see pp. 434–5, *post*).
(*n*) [1929] 1 Ch. 169.
(*o*) See also, as to paying doubtful claims, *Re Stanley* [1923] 2 D.L.R. 910 (Ontario).
(*p*) [1899] 1 Ch. 797. *Cf. Re Grindey* [1898] 2 Ch. 593 (p. 428, *ante*); *Re Mackay* [1911] 1 Ch. 300 (p. 431, *ante*); *Henning* v. *Maclean* (1900) 19 Can.Ab. 1064 (p. 436, *post*).
(*q*) (1897) 76 L.T. 479. *Cf. Re Grindey* [1898] 2 Ch. 593 (p. 428, *ante*).

was not to be liable for costs. The trial judge held that no such arrangement existed; but there was some evidence of it. The Court of Appeal held that there was no breach of trust, but that if they were wrong in that, relief would be granted.

On the other hand, in *Re Greenwood* (*r*) relief was refused. Trustees under a will, who were directed to convert and invest the estate, left debts uncollected for six years. The debtor was director of an important company, and owned house and share property. Eventually the debtor died insolvent, and £500 odd out of £1,400 was lost to the estate. The trustees were honest, but Eve J. held it was not reasonable just to let things drift for six years.

Misguided Appropriation

In *Re Brookes* (*s*), a trustee distributed the estate on the death of the tenant for life, appropriating a mortgage for a share not yet due to be handed over. All sums due from the mortgagor were being regularly paid, but the trustee did not know anything about the state of the mortgaged property. Two years later, on the advice of his solicitor, the trustee went to inspect the premises, which were ten miles away, and which he had never seen before. He found them vacant and in a bad state of repair, and the security could not be realised as it was worthless. The premises had been in that state since before the appropriation. The beneficiary in whose favour the appropriation had been made sued the trustee. Astbury J. held that there had been a breach of trust and that relief must be refused as it had not been reasonable.

Devastavit

In *Re Kay* (*t*), an executor had an estate with assets of £22,000 and debts as ascertained at the testator's death in June, 1894, of about £100. He paid the widow a legacy of £300 and the income (about £600 a year) on the rest of the estate. In August, 1894, a vague claim was made by a creditor. In November of that year the trustees put out the usual advertisements for creditors. The following month the claim became less vague when the creditor issued a writ. The executor was advised that there was a complete answer to the claim, and he continued to pay the income to the widow. He defended the action without applying to the court for directions. In April, 1896, judgment was given

(*r*) (1911) 105 L.T. 509.
(*s*) [1914] 1 Ch. 558.
(*t*) [1897] 2 Ch. 518. And see *Marsden* v. *Regan* [1954] 1 W.L.R. 423. *Cf. Verdun* v. *Sun Oil Co., Ltd.* [1952] 1 D.L.R. 529 (Canada). See also *Stewart* v. *Snyder* (1900) 35 Can.Ab. 238 (Ontario).

for the creditor for £3,511, and an account was ordered. Under this, over £26,000 was found due. Thereupon the executor paid no further income to the widow. Romer J. gave him relief in respect of everything done before the issue of the writ. He said (*u*): "I believe the defendant acted honestly; but it would lead to grave results if I were to hold that an executor having notice of a serious and substantial claim against his testator's estate could disregard it with impunity merely because he believed, or was advised, that the claim could be defeated . . ." In *Marsden* v. *Regan* (*a*), where relief was granted, Evershed M.R. pointed out that relief was not automatic merely because the trustee acted on legal advice.

Purchase by Trustee from Himself

In *Re Clark* (*b*), a trustee honestly let trust property to himself at too low a rent. Eve J. declined to relieve him. It would seem that the policy behind the universal voidability of sales by a trustee to himself would not allow them as fairly to be excused, however honest and reasonable.

Paying Wrong Beneficiary

National Trustees Co. of Australasia, Ltd. v. *General Finance Co. of Australasia, Ltd.* (*c*), was a case on the relieving provisions of the Trusts Act, 1901 (Victoria), s. 3. Trustees who were remunerated for their services paid the wrong person as beneficiary. They acted on legal advice, which was wrong because it applied a statute which was not yet in force on the relevant date. The advice of the board, given through Sir Ford North, was that there should be no relief. Though the trustees acted honestly and reasonably, relief did not automatically follow. The trustees in this case ought not fairly to be excused for three (cumulative) reasons. First, the trust work was done for profit. Secondly, the trustees had made no effort to recover the fund or any of it for their beneficiaries. Thirdly, they had made no "attempt whatever to replace the fund or relieve the respondents from loss; nor have they condescended to give the court any explanation or reason why they abstained from doing so. It may be that the solicitors would be willing or might be compelled to make good the loss, if the trust company should find they cannot obtain relief

(*u*) [1897] 2 Ch. 524.
(*a*) [1954] 1 W.L.R. 423, 434–5.
(*b*) (1920) 150 L.T.J. 94.
(*c*) [1905] A.C. 373. And see *Re Windsor Steam Coal Co. (1901), Ltd.* [1929] 1 Ch. 151 (see p. 432, *ante*).

elsewhere (*d*)." This case does not decide that a paid trustee cannot get relief, nor even that relief will be denied to a paid trustee who makes an error in the distribution, though that may be the law (*e*). What the Judicial Committee decided was that the three factors they enumerated were circumstances to be taken into account, and that the concurrence of them in that case tipped the scales against relief.

The trustees in *Davis* v. *Hutchings* (*f*) were unpaid. In distributing the trust property, they handed over a share to a person who said he was assignee of it. They did not call upon him to prove his title. Had they done so, they would have got notice of a prior charge on that share. The person paid as assignee was solicitor to the trustees, to the original beneficiary of the share in question, and to the prior chargee of it. On that chargee suing the trustees, Kekewich J. held them liable for breach of trust, and would not accord relief although he conceded their honesty and reasonableness. He took this stringent view (*g*): ". . . If a trustee has, without any default of his own, employed a defaulting agent, whom he believed to be a competent man, to do certain work, and, whether competent or not, the agent turns out to be fraudulent and gets the trustee into a scrape, the trustee cannot shelter himself behind that. Why ought he to be let off? A trustee who employs an agent must, according to the ordinary rules of law, be responsible for the acts of the agent. I do not believe it was the intention of the legislature that he should be let off that." All three judges of the Court of Appeal in *Re Allsop* (*h*) disapproved of that dictum by Kekewich J., and gave relief to trustees who, acting under legal advice, paid the income of a share to the wrong person.

In *Re Pawson's Settlement* (*i*), the trustees had notice of a mortgage of a life interest under the trust. They nevertheless paid the interest to the beneficiary and not to the mortgagee, who thereupon sued them. Sargant J. held there was no breach of trust, but that if he was wrong in that relief would be granted. In *Holland* v. *German Property Administrator* (*k*), the trustees paid the income to the tenant for life, a German. The defendant said that he was entitled under Order in Council. The Court of

(*d*) See [1905] A.C. 381–2.
(*e*) *Cf.* the opinion of Lawrence L.J. in *Re Windsor Steam Coal Co.* (*1901*), *Ltd.* [1929] 1 Ch. 151, 163–5.
(*f*) [1907] 1 Ch. 356.
(*g*) [1907] 1 Ch. 365.
(*h*) [1914] 1 Ch. 1. And see *Henderson* v. *Henderson* (1922) Can.Ab. 1065 (Ontario).
(*i*) [1917] 1 Ch. 541.
(*k*) [1937] 2 All E.R. 807.

Appeal held that (1) the defendant was not entitled, and (2) if he was, the trustees must be relieved from liability. In *Henning* v. *Maclean* (*l*), trustees were relieved where they paid the wrong beneficiary as a result of misconstruing the trust instrument.

Ultra Vires Company Acts

In *Re Claridge's Patent Asphalte Co., Ltd.* (*m*), the directors of a company, using the company's funds, floated a subsidiary company. They were advised (erroneously, as it turned out) by a prominent Chancery barrister that the scheme was *intra vires*. In fact, it was *ultra vires*, and to make matters worse the subsidiary company collapsed in financial desolation. Astbury J. granted the directors relief.

Absence of Qualification Shares

In *Re Barry and Staines Linoleum, Ltd.* (*n*), a director failed to obtain the necessary qualification shares within the allotted time, thinking he had them. He had either overlooked or forgotten the definition of "qualification shares" in the company's articles of association. At all events, he acted as director after the expiry of the time limit, and thus became liable to penalties. He brought an action to be relieved. Maugham J. gave him relief from the fines, but not from any prospective liability to compensate the company. The learned judge said he had jurisdiction to cover the latter as well, but it "ought to be exercised with care (*o*)." The views of the shareholders (solvent company) or creditors (insolvent company) must first be heard.

Technical Defects

In *Re J. Franklin & Son, Ltd.* (*p*), the complaint concerned a resolution by the directors to give another director £8 a week remuneration. The resolution was invalid because there was no quorum, and that was because one of the two persons present was not a director on account of not being the registered owner of the requisite qualification shares (*q*). The liquidator sought repayment

(*l*) (1900) 19 Can.Ab. 1064. *Cf. Re Grindey* [1898] 2 Ch. 593 (p. 428, *ante*); *Re Mackay* [1911] 1 Ch. 300 (p. 431, *ante*); *Perrins* v. *Bellamy* [1899] 1 Ch. 797 (p. 432, *ante*).

(*m*) [1921] 1 Ch. 543. And see *King* v. *Matthews* (1903) 35 Can.Ab. 239 (Ontario).

(*n*) [1934] Ch. 227. And see *Re Gilt Edge Safety Glass, Ltd.* [1940] Ch. 495 (Crossman J.).

(*o*) [1934] Ch. 233–4.

(*p*) [1937] 4 All E.R. 43. And see *Re Gilt Edge Safety Glass, Ltd.* [1940] Ch. 495 (Crossman J.).

(*q*) As to excuse for that, see *Re Barry and Staines Linoleum, Ltd.* [1934] Ch. 227 (above); *Re Gilt Edge Safety Glass, Ltd.* [1940] Ch. 495; *King* v *Matthews* (1903) 35 Can.Ab. 239 (Ontario).

of the money, and Crossman J. refused relief. He said (*r*): "The respondent [to whom the £8 a week was paid], Lily Franklin, has received and retained the payments, and she has not come forward to give any evidence. All that I know is that these payments were wrongly made to her. It is true that it was partly owing to a technicality or a technical defect, that the payments were improperly made, and, if that technical defect had not existed, it might have been extremely difficult for anyone to attack these payments; but, in my judgment, the payments were improper, and they were not justified." Dealing with the two persons present at the directors' meeting, Crossman J. said (*s*) that if they had been reckless, not considering the interests of the company at all, they would have been dishonest; but that was not the case. Also, it was reasonable for them to have thought they were both directors. But they ought not fairly to be excused in the circumstances: there was only a technical defect, but the resolution would have been objectionable (as being contrary to the company's interests) even if it had been technically valid.

Conclusions

The judges are right in refusing to lay down rules as to what acts are honest, reasonable, or fairly to be excused. These are questions of fact, to be determined in the light of all the circumstances of each case. There is no room for precedents in such areas.

As with all questions of fact, though, it is necessary for counsellors and judges to know what facts to look for. Those facts are, of course, facts showing or negativing honesty, reasonableness, and excusability. But these words are not totalitarian. What is meant by honesty, what is meant by reasonableness, and what ought fairly to be excused, are questions of policy and not of philology.

Honesty is a quality (present or absent) of a trustee's reason for doing an act. Honesty may mean absence of self-seeking, or it may mean some more positive characteristic. It would probably be agreed that, for the institution of the trust to fulfil the objects for which people employ it, it is not enough that trustees should be unselfish. It would probably be agreed that the law must encourage them to apply active minds to their beneficiaries' welfare. In that case, it should be possible to define honesty in the relieving legislation as follows: a trustee has been honest when, in deciding

(*r*) [1937] 4 All E.R. 46.
(*s*) [1937] 4 All E.R. 46–7.

whether or not to act in a certain way, the predominant reason for his decision was that he thought it would further the interests of the trust.

Reasonableness is a quality (present or absent) of an act done by a trustee. The standard of reasonableness is clearly objective, but that does not proclaim what the standard is. One does not know whether the trustee's conduct is to be compared with that of the average trustee, the desirable trustee, the average businessman running his own affairs, the prudent businessman, or the average person (who may well be unbusinesslike). To make the selection is a policy decision. The more it is desired to encourage people to undertake voluntary trusteeship, the lower the standard ought to be pitched. Other factors operating on the same side are the desirability of keeping down the fees of professional trustees, and the psychological ill effects of holding a man liable when he has honestly done his poor best. The more it is desired to encourage the setting up of trusts, the higher the standard ought to be. Thus the confidence of settlors would be increased. Similarly pointing to a higher standard are the desirability of keeping down interference by the beneficiaries (leading to applications to the court), psychological ill effects of not redressing loss sustained by a beneficiary or creditor through the act of someone else, and the fact that beneficiaries are often infants or persons unborn at the date of the act complained of. The authorities usually (but not always) look ostensibly to the prudent man of business managing his own affairs. This probably becomes in practice the more careful individual: the prudent High Court judge imagining what he would have done as a businessman. That could be avoided by adducing evidence as to the practice of prudent businessmen (who are presumably the successful variety). The person who undertakes executorship for his neighbour round the corner often falls pathetically short of even their standard.

If a breach of trust is held to be honest and reasonable, the next stage is to consider whether it ought fairly to be excused. Fairness may be a question to be determined by instinct or upbringing, but it ought also to be a policy matter. If, as in the authorities it is said, fairness has to be considered in relation to all the parties—trustees, beneficiaries, creditors—then each case involves a selection of whose interests are to predominate. The possible policies are almost infinite. But in the decided cases the unfairness of giving relief has always flowed from some act by the trustee. If a trustee has honestly and reasonably committed a breach of trust, he has always been excused unless some element

of his conduct other than the facts constituting the breach has weighed against him. Such elements have been of three classes: first, the trustee's conduct before the breach of trust, *e.g.*, that he contracted for payment when appointed trustee; secondly, the commercial propriety of a transaction which is a breach for a technical reason, *e.g.*, where a company transaction is unimpeachable except for some formal invalidity, but where the court does not approve of the director's reasons for the transaction; finally, the trustee's conduct after the breach, *e.g.*, that he has not done all he could to avert damage to the beneficiaries.

Note on Costs

The books to which one would usually turn for guidance on this matter give no separate attention to the subject of costs in actions where the relieving action is pleaded. Nor has the matter been explicitly considered in any reported case.

Obviously, if the trustee sued loses, he pays the costs. But if he wins? It seems that the rules are the same for whatever reason a trustee is held not liable. *I.e.*, he is just as much entitled to costs if he is held to have committed a breach of trust and is granted relief as if he is held not to have committed any breach.

First, costs normally follow the result. That is to say, the unsuccessful plaintiff beneficiary must pay. This may be very hard, but any solution would be hard on someone. In *Palmer* v. *Emerson* [1911] 1 Ch. 758, 770, Eve J. said: "Now comes an unfortunate part of the case, the question who is to bear the costs of this litigation. No one can regret more than I do that the costs must fall on one or other of the litigants, both of them, according to my view, equally innocent and equally to be pitied; but, after all, in that state of things where the equities are so equal, it seems to me that the costs must abide the result; and in dismissing the action, as I do, I must dismiss it with costs."

Secondly, the unsuccessful plaintiff may be not a beneficiary but another trustee or company liquidator. In those circumstances he will be in the same position as any other unsuccessful trustee plaintiff. He will be personally liable for the costs unless he had the authority of the court to bring the action, or satisfies the court that it was reasonable to do so. Then he will be allowed to recoup himself from the trust fund. In *Re Claridge's Patent Asphalte Co., Ltd.* [1921] 1 Ch. 543, 549, Astbury J. "dismissed the summons with costs, but intimated that as there were many circumstances requiring investigation the liquidator had only done his duty in bringing the matter before the court, and that no difficulty

should be placed in the way of his recouping himself out of the assets."

Thirdly, the successful trustee defendant may be deprived of his costs or part of them for some collateral unsatisfactory conduct. In *Re Allsop* [1914] 1 Ch. 1, 14, the Court of Appeal declined to allow the successful defendants their costs in the court below, "having regard to the conduct of the trustees in declining to account."

Finally, if the unsuccessful plaintiff beneficiary does not pay the defendant trustee's costs, the latter is normally entitled to recoup himself (i) out of that beneficiary's interest, and, if necessary, (ii) out of the trust fund as a whole.

REMEDIES FOR BREACH OF LANDLORD'S COVENANT TO REPAIR

By J. B. Sweetman, ll.b., Solicitor

One of the commonest types of lease must be that in which the tenant covenants to do internal repairs and the landlord covenants to do external and structural repairs. The landlord's remedies in the event of the tenant failing to carry out his obligations, and the limitations and conditions which have been imposed upon the exercise of those remedies, are too well known to need repetition here. But there is very little authority on the converse case—in which the tenant wishes to secure the performance of the landlord's covenant to repair—and indeed the tenant's position seems to be so unsatisfactory that it is rather surprising that no legislative provision has been made for his protection, as it has in so many other respects. It must, perhaps, be admitted that in the case of premises subject to the Rent Control Acts the provisions of the Housing Repairs and Rents Act, 1954, do to some extent give some indirect aid to a tenant in this respect, since if the landlord applies for a " repairs increase " of the rent, he is liable to be met with a " certificate of disrepair " obtained by the tenant from the local authority which will not only bar his claim to an increase but will also lose him the 40 per cent. increase permitted under the Rent Act of 1920, if applicable. But that is a by-product of a process which seems to be likely to remain very little used, and is, of course, limited to dwelling-houses falling within the Rent Acts, so that it only touches on the fringe of the difficulty. The business tenant, the tenant of living premises outside the Rent Acts for whatever reason, and the Rent Act tenant whose landlord is content to take the existing rent, must rely on his scanty common law and equitable rights, and these remain, therefore, of prime concern.

The remedies which naturally spring to mind for breach of a landlord's covenant in a lease are (1) action for damages; (2) specific performance; and (3) some form of self-help in the shape of holding back or making a deduction from the rent or terminating the tenancy. It is proposed to examine the possibilities of each in turn.

(1) *Action for damages.* There is no doubt that the tenant can bring an action for breach of a landlord's covenant to repair, but there seem to have been doubts in the past on two points—

(a) whether the tenant must have carried out the repairs before he brought his action and (b) whether the measure of damages was the cost of such repairs. Fortunately, both these doubts were resolved in the case of *Hewitt* v. *Rowlands* ((1924) 131 L.T. 757 (C.A.)). The proceedings were complicated, and were indeed described by Bankes L.J. as "an unfortunate litigation," and it is a little difficult to extract briefly the answers to the two propositions mentioned. The dispute arose mainly on the direction given to himself by the District Registrar of the High Court at Liverpool, to whom the assessment of damages for breach of a landlord's covenant to repair was remitted. The direction was this: ". . . in assessing the amount of the damages payable by the defendant to the plaintiff, I have directed myself that a tenant is only entitled to recover, in an action against his landlord for damages for breach of an agreement to repair, the actual amount properly expended by him on the property in executing the repairs which the landlord was responsible for, together with any pecuniary loss or damage which the tenant has suffered from the landlord's default." The decision of the Divisional Court on the first point (approved later by the Court of Appeal) is best shown in the following extract from the judgment of Horridge J.: "In the absence of authority, I do not think the question turns upon whether the money has been spent or not. It may be that there may be cases in which the estimated cost of repairs could properly be looked at not as necessarily themselves being the damages, but as enabling the tribunal to ascertain what damage the tenant has suffered. There may be other cases, possibly, in which it would be almost useless to look at it. That is not the ground on which the learned registrar has put his decision. He has put it on the ground that this money has not been expended. On that ground I think he is wrong and I think he ought to reconsider his report, having the simple direction from us that it is immaterial whether the money had been spent or not." And on the second point, the judgment of Bankes L.J. in the Court of Appeal contains what is now perhaps the recognised statement of the correct measure of damages: ". . . Perhaps I could express it shortly in this way: that the measure of damages is the difference in value to the tenant of the premises from the date of the notice to repair down to the date of the assessment of damages, between the premises in their present condition and their value if the landlord on receipt of the tenant's notice to repair had fulfilled the obligations of the covenant." (It should be added that it is clear from a subsequent interjection by Bankes L.J. that any special damages suffered by the tenant—*e.g.*, damage to his furniture on the premises—are to

be included as well as general damages on the basis stated; and that the reference to a "notice to repair" does not mean a notice required under a statute, but merely the notice which at common law is normally necessary to make a landlord liable to execute repairs under his covenant: *Makin* v. *Watkinson* (1870) L.R. 6 Ex. 24.)

The trouble about an action for damages in this type of case is, however, that the amount of damages claimable by the tenant on the basis laid down by Bankes L.J. will often be purely nominal, and bear no relation to the cost of carrying out the repairs. For instance, a building may not look very pleasant if painting and repointing of the exterior walls is not carried out; but can it be said that yearly tenants of offices on the first floor have suffered from a considerable diminution in the value of those premises to them as a result? The remedy is in fact inadequate in a great many cases.

(2) *Specific performance.* It is clear that, in general, the court will not, in the exercise of its equitable jurisdiction, grant specific performance of a landlord's repairing covenant: *Paxton* v. *Newton* (1854) 2 Sm. & G. 437. The reason is that this is a type of covenant involving physical operations, which the court would have to supervise if a decree of specific performance were to be made effective; and the court has always declined to become involved in that kind of supervision. The result is unfortunate, because the remedy in damages is often inadequate; but the rule seems too well-established to admit of any possible challenge, short of legislation. And that would certainly be extremely difficult to frame adequately.

(3) *Self-help.* It has been said (see Woodfall's *Landlord and Tenant*, 25th ed., p. 772) that the tenant is entitled to do the repairs himself on the landlord's default, and deduct the amount expended from the rent. The sole authority for this proposition, however, appears to be the case of *Taylor* v. *Beal* ((1591) Cro. Eliz. 222), and it is respectfully submitted that the report of that case hardly justifies its citation as an authority on this point. The report is extremely brief and the relevant part can be quoted in full. This was a decision of the Court of Queen's Bench, consisting of Sir Francis Gawdy, John Clench, Esq., and Edward Fenner, Esq., Justices, and the report reads as follows: "Debt for rent reserved upon a lease for years. The issue being joined if the rent were paid or not, the defendant gave in evidence for part of the rent, that the plaintiff by covenant was to repair the house and did not, and that thereupon he expended part of the rent in

repairing the house. The question was, If this evidence will maintain the issue?—Gawdy conceived it did, for the law giveth this liberty to the lessee to expend the rent in reparations, for he shall be otherwise at great mischief, for the house may fall upon his head before it be repaired; and therefore the law alloweth him to repair it, and recoup the rent.—Fenner. It is no evidence; for if the lessor will not repair it, he is to have his covenants against him.—Clench seemed he might well expend the rent in reparations, but he ought to have pleaded it, and cannot give it in evidence upon the general issue. . . ." It is, of course, difficult to follow the exact purport of all this, framed in the language and procedure of the 16th century. But is not the decision a majority one against allowing the tenant to deduct from his rent in the case before the court, with one judge in favour of the general principle of deduction, at any rate in the circumstances referred to (as to which more anon), one against such deduction on principle, and one preferring to rest his decision on a procedural point? Such a decision can hardly form a satisfactory authority for any proposition whatsoever, even if it were not unsupported by any other decision over a period of more than 350 years.

It is submitted that the proposition is in fact unsupportable in view of the propositions established in the case of *Hewitt* v. *Rowlands* (*supra*) as to the measure of damages for breach of the landlord's covenant, which swept away what was evidently an existing conception that the damages were necessarily the amount which the tenant had expended on the repairs. If that conception had held good, it would be quite logical for the tenant to be able to deduct the amount from the rent, thus merely obtaining by self-help what the court would have given him had he brought an action on the covenant; but if the amount of the repairs and the amount of the damages might be vastly different, the tenant could choose whichever remedy paid him best, and the amount he would recover would vary accordingly. This is surely neither logical nor practical. As a general proposition, it is suggested that the tenant has no right to deduct the cost of repairs done by him from the rent, though he can, in the landlord's action for the rent, counterclaim for breach of the landlord's covenant to repair. This is consistent with the judgment of Fenner J. in *Taylor* v. *Beal* (*supra*) and with the judgment of du Parcq J. in the court of first instance in the somewhat more recent and better known case of *Taylor* v. *Webb* ([1937] 2 K.B. 283, C.A.). (The Court of Appeal did not have to consider the point.) In fact, there is direct authority for the proposition in the case of *Surplice* v. *Farnsworth* ((1845) 7 Man. & G. 576), cited by Scrutton J. in *Hart* v. *Rogers*

([1916] 1 K.B. 646) as follows: "In *Surplice* v. *Farnsworth*, it was held that the breach of an express covenant to repair, whereby the premises were not fit for the purpose for which they were let, was no defence to a claim for rent, but a matter of cross-action."

The same case of *Surplice* v. *Farnsworth* is authority for refuting the suggestion that a tenant can determine the tenancy because of failure by the landlord to fulfil his covenant to repair, unless indeed the lease or tenancy agreement expressly so provides. In the words of Tindal C.J. in that case: "It seems to be admitted that this rule cannot be sustained, unless it is shown that the ground upon which it was obtained can be supported; namely, that if the landlord is bound to repair the premises during the tenancy, there is an implied condition that should he fail in the performance of his contract, the tenant may throw up the tenancy. No authority has been cited to show that such a contract to repair implies such a condition. If the contract were under seal, the condition that a tenant upon the breach thereof might determine the tenancy, could not be implied. Where it is intended that a covenant shall operate as a condition, there is always an express covenant to that effect; as in the case of re-entry by the lessor for breach of covenant by the lessee. I am not aware of any legal principle that an agreement by parol is in this respect to be construed differently from one under seal. Assuming, therefore, that there was an agreement in this case by the landlord to repair—though none was actually proved—there is no principle of law to authorise the importing of the condition contended for. In such a case the tenant will have his remedy over against his landlord; but the relation of landlord and tenant still subsists between them."

There is only one glimmer of hope for the tenant in the matter of self-help. But the glimmer is both small and faint. It rests on the words of Gawdy J. in *Taylor* v. *Beal* (*supra*), particularly "for he shall be otherwise at great mischief, for the house may fall upon his head before it be repaired"; and upon another old case, *Waters* v. *Weigall* ((1795) 2 Anstr. 575), in which a tenant who had done repairs required immediately because of damage by tempest, to prevent further injury, was sued for the rent, and filed a bill to retain the amount of the repairs out of the rent. It was argued that the house required immediate repair, which dispensed with the necessity of previous application to the landlord, and that, had the repairs been delayed, the damages would have been increased. These arguments, however, were not dealt with by the Court of Exchequer; the judgment of Macdonald C.B. can be quoted verbatim: "I do not see how you entitle yourself to the interposition of this court. If the landlord is bound in law or

equity to repair in consequence of the accident that has happened, and you were right in expending this sum in repairs for him, it is money paid to his use; and may be set off against the demand for rent. If you fail in making out these points, your ground of relief is destroyed in equity, as well as at law." The fallacy which seems to have arisen from perusal of this judgment (aided perhaps by the marginal note in the report) is that the court affirmatively decided that the tenant could set off the cost of the repairs if the landlord was liable for them. In fact, the decision was against intervention, so that the statement was purely *obiter*; and the whole thing is qualified by the phrase "if you were right in expending this sum in repairs for him." It is submitted that Macdonald C.B. did not intend to prejudge the issue whether the tenant had, or had not, a legal right to do the repairs on behalf of the landlord. The point is perhaps made a little less uncertain if one reads the report of the subsequent proceedings in the Court of King's Bench ((1795) 6 Term.Rep. 488), when the landlord sued for the rent and the tenant pleaded that, in the circumstances already mentioned, he was obliged to lay out in the repairs £30 which the landlord became liable to repay to him; that the sum was still due to the tenant, and exceeded the damages sustained by the landlord by reason of the breach of covenant to pay rent; and claiming to set off that sum of £30. The landlord's demurrer to this plea was that the landlord had no notice of the tempest or the damage done to the house and had not been requested to repair before the tenant made the repairs. The court rejected the plea without argument, on the ground that it did not set off any certain debt, but uncertain damages, which would have to be assessed by a jury. The judgment of Lord Kenyon C.J. concludes with a suggestion that if the "plaintiff" [*sic*] had fairly laid out money on repairing what he was not bound to repair, perhaps a court of equity would give him relief. This, apart from being a mere pious hope, and perhaps even at the time an unjustified one in view of the previous proceedings in the Court of Exchequer, must be viewed in the light of then current ideas on the recovery of moneys paid to another's use. After all, Lord Kenyon was the immediate successor of Lord Mansfield as Chief Justice of England, and may be taken to have had in mind his predecessor's liberal ideas on the subject of implied contracts, expressed in the well-known dictum in *Moses* v. *Macferlan* ((1760) 2 Burr. 1005) as to money had and received—"In one word, the gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money." The wide or liberal interpretation of *Moses* v. *Macferlan*

has long since fallen from favour (see *Sinclair* v. *Brougham* [1914] A.C. 398, *per* Lord Sumner; but *cp. Fibrosa Spolka Akcyjna* v. *Fairbairn* [1943] A.C. 32, *per* Lord Wright, in which it is suggested that the juristic concept remains as Lord Mansfield left it, but "the standard of what is against conscience in this context has become more or less canalised or defined"). It appears unlikely that the courts will now consider the admission of a fresh type of case into the recognised categories of cases in which moneys paid to the use of another are recoverable. The claim might be said to have some analogy to the principle in *Moule* v. *Garrett* ((1872) L.R. 7 Exch. 101) in which a tenant who had assigned his lease and was afterwards compelled to execute repairs under his covenant with the lessor was held entitled to recover the cost from the assignee, such assignee being primarily liable. But that case was explained by Lord Wright M.R. in *Brook's Wharf and Bull Wharf, Ltd.* v. *Goodman Bros.* ([1937] 1 K.B. 534 at p. 544) as follows: "The essence of the rule is that there is a liability for the same debt resting on the plaintiff and the defendant and the plaintiff has been legally compelled to pay, but the defendant gets the benefit of the payment, because his debt is discharged either entirely or *pro tanto*, whereas the defendant is primarily liable to pay as between himself and the plaintiff." The distinctive feature of that type of case is a liability to a third party which the plaintiff has to satisfy, though the defendant is primarily liable.

If the cost of repairs is not recoverable as money paid to the use of the defendant on the *Moses* v. *Macferlan* principle, there seems to be only one way in which a claim to its recovery could be based—on some sort of "agency of necessity." This seems to be behind the dictum of Gawdy J. in *Taylor* v. *Beal* (*supra*) and the argument in *Waters* v. *Weigall*, and in each case the emergency aspect of the repairs is stressed. There is therefore here some suggestion that, where the house suddenly starts to fall about the tenant's ears, and he props it up to stop it doing so, he may recover the cost of so doing. One could not put it more strongly than that. On any view of the cases quoted, it seems clear that the principle (if it is applicable at all) would only apply to repairs necessarily done to avert an emergency, and having to be done before any possibility of notice to the landlord requesting him to do the repairs (*cf. Gwilliam* v. *Twist* [1895] 2 Q.B. 84). The last quoted case also contains a dictum by Lord Esher M.R. to the effect that the doctrine of authority by reason of necessity is confined to certain well-known exceptional cases, such as those of the master of a ship or the acceptor of a bill of exchange for the

honour of the drawer—a dictum singularly unfavourable to any extension of the doctrine to the realm of landlord and tenant.

The conclusion seems inescapable that the tenant must normally rely on his action (or counterclaim) for damages, unsatisfactory though that may prove. He may under certain circumstances be able to get something done by indirect methods—*e.g.*, by the "notice of disrepair" procedure under the Housing Repairs and Rents Act, 1954, mentioned at the commencement of this article; or by inducing the local authority to take action under the Housing Acts or the Public Health Acts, or the Minister of Agriculture and Fisheries and Food under the Agricultural Holdings Act, 1948. But these statutory provisions have only a limited application and do not affect the general issue.

ESTATE DUTY ON DETERMINED LIMITED INTERESTS

G. Boughen Graham, ll.b., Barrister-at-Law

The Provisions Generally

It was decided in *Att.-Gen.* v. *Beech* [1889] A.C. 53, and in *Att.-Gen.* v. *de Preville* [1900] 1 Q.B. 233, that where a life tenant, during his life, surrendered his life interest to the remainderman then, whether or not that surrender took place within the period (now five years) in which gifts *inter vivos* are not effective to save estate duty, there was nothing left to pass or to be deemed to pass under the Finance Act, 1894, s. 1 or s. 2, with the result that the funds in which the life interest subsisted entirely escaped estate duty on the death of the life tenant. This position being prejudicial to the interests of the Commissioners of Inland Revenue, various provisions have from time to time been enacted with a view to ensuring that in such circumstances estate duty would be payable. First was the Finance Act, 1900, s. 11, which was superseded by the Finance Act, 1930, s. 35, which was in turn superseded by the Finance Act, 1940, s. 43, which was amended by the Finance Act, 1950, s. 43 and Schedule VII. Those amendments were effective in respect of any death taking place after April 15, 1950, and the Finance Act, 1940, s. 43, as so amended, is the current provision.

Subsection (1) of section 43, as amended (*a*), provides that:—

> "Subject to the provisions of this section, where an interest limited to cease on a death has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner (except by the expiration of a fixed period at the expiration of which the interest was limited to cease), whether wholly or partly, and whether for value or not, after becoming an interest in possession, and the disposition or termination (or any of them if there are more than one) is not excepted by subsection (2) of this section then . . ."

If, had there been no disposition or determination of the limited interest or of any interest expectant thereon or subject thereto, the property in which the limited interest subsisted would have passed or would have been deemed to pass under section 1 or 2 of the Finance Act, 1894, then such property shall be deemed so

(*a*) References to "section 43" are the Finance Act, 1940, s. 43, as amended.

to pass or to be deemed to pass notwithstanding the disposition or determination.

Subsection (2) (a) provides that subsection (1) will not apply where the disposition or determination was bona fide effected or suffered five years before the death (or if it was effected or suffered for public or charitable purposes one year before the death) and

> "if bona fide possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforth retained to the entire exclusion of the person who immediately before the disposition or determination had the interest and of any benefit to him by contract or otherwise";

and it is further provided by the Finance Act, 1950, s. 43 (2), that such bona fide possession and enjoyment shall not be deemed to be assumed immediately upon the determination and thenceforth retained, etc., if the erstwhile annuitant or life tenant at any time thereafter has a benefit by virtue of any associated operations as defined in the Finance Act, 1950, s. 43 (3). It is provided by the Finance Act, 1940, s. 43 (2) (b), that in the case of a partial determination the fact that the erstwhile annuitant or life tenant retains some benefit in that part of the property in which his limited interest has not been released shall not be regarded as a retention of benefit *quoad* that part of the property in which his limited interest has been released.

The Finance Act, 1950, s. 44, determines who shall be accountable for the duty which is chargeable by virtue of the above-mentioned provisions, and also provides a means whereby trustees can protect themselves against liability in respect of a charge of an uncertain amount which is likely to arise in the future.

The Charging Provisions

Unless the conditions of subsection (1) or section 43 are fulfilled, the property in which the limited interest subsisted is not brought into charge, and one need not consider the precise effects of such a charge nor yet the exemptions conferred by subsection (2). Accordingly, the wording of subsection (1) must be considered with some care.

"*An interest limited to cease on a death*"

By the Finance Act, 1940, s. 58 (6), this is defined to include an interest which may cease alternatively on the occurrence of

some event or the expiration of some period before the death, but section 43 (1) itself expressly excepts a determination on the expiration of a fixed period at the end of which the interest was limited to cease. Thus, suppose funds to be limited to A for life or until he should become bankrupt or marry or to be limited to A for twenty years if he shall so live: in both cases they are held for an interest limited to cease on a death. In the first case if A becomes bankrupt or marries there will be a charge to estate duty by reason of section 43 (1) unless the case is covered by the exempting provisions of subsection (2). In the second case if A survives the twenty years there will, quite apart from subsection (2), be no charge in respect of the termination.

The normal case in which the provisions apply is that of an annuity or a life interest enjoyed by the deceased for his life, but the charge is not limited to such cases and will extend to an estate *per autre vie*: thus, if funds are limited to A during the life of B, with remainder to C, and if A's life interest is determined within five years of the death of B, there will be a charge for duty in B's estate, although it will, by the Finance Act, 1894, s. 4, be exempted from aggregation. Difficulties arise in the case of discretionary trusts: if property is settled upon trust to pay the income thereof between A, B, C and D in such shares and proportions as the trustees determine, with remainder at some time in the future to X, and if some part of the property has been released to X, then, if one of the four income beneficiaries dies and the trusts continue after his death, there can be no charge under this provision in respect of the property released to X because there is no interest limited to cease on the death of such beneficiary. It is otherwise if the trusts upon which the property is held are varied as a result of the death of the beneficiary concerned. Thus, if property is limited to A, B, C and D during the life of A, and thereafter for a further period to B, C, D and E, with remainder to X, and if property has been released to X within five years of A's death, there may be a charge if it can be said that the income interests were in possession. In the case of discretionary trusts this raises some difficult problems which are more conveniently discussed below.

"*After becoming an interest in possession*"

A reversionary annuity or a reversionary life interest may be determined or disposed of without giving rise to any liabilities under this provision. Thus, if property is settled on A for life, remainder to B for life, remainder to C, then so long as A is alive

B can release his life interest to C and no estate duty will in B's estate be payable upon the funds whether or not B survives A.

It is sometimes important, therefore, to consider when an interest can be said to have been in possession, and the problem is not unlike that which arises under the Finance Act, 1894, s. 5 (3), as amended by the Finance Act, 1938, s. 5 (3), which provides that, if on the death of any person his interest in settled property fails or determines before it has become an interest in possession, and if subsequent limitations under the settlement continued to subsist, the property will not be deemed to pass on his death by reason only of such failure or determination.

From the authorities bearing on that provision it seems that an interest is not considered to have been in possession because the deceased might have been maintained or advanced out of the property, but if the trustees are compelled to pay the whole income from a fund to a beneficiary notwithstanding that he is only contingently entitled to the capital that beneficiary will have been in possession. Thus, where the deceased was entitled to a fund on attaining the age of twenty-five, and there was no provision dealing with the intermediate income, he was entitled by the Trustee Act, 1925, s. 31 (1) (ii), to have that income paid to him, and it was held in *Re Jones's Will Trust* [1947] Ch. 48 that his interest had come into possession for the purposes of section 5 (3): similarly, where there was a direction to spend a fixed yearly sum on the maintenance of an infant, it was held in *Att.-Gen.* v. *Coole* [1921] 3 K.B. 607 that the infant had an interest in the possession in such part of the fund as was necessary to produce such fixed sum.

Other problems arise where the interest is in an estate which has not been completely administered. Thus, it was held in *Re Harrison* [1918] 2 Ch. 374 that a settled legacy is not in possession until it has been expressly or by implication assented to. But where an annuitant is interested in an annuity payable from the date of death, his estate is entitled to an apportioned part of that annuity so that the annuity will have been in possession from the date of death. In the case of an interest in the residue of an estate, it is provided by the Finance Act, 1938, s. 47 (3), that such interest is deemed to have become an interest in possession on the date as from which the income of the residue would have been attributable to the interest concerned if the residue had been ascertained immediately after the death of the testator or intestate.

Difficult questions arise as to when interests under a discretionary trust can be said to be in possession. If the terms of the trust are such that all the income is to be distributed between

the class as a whole, so that the only uncertainty is in what shares and proportions the individual members will receive it rather than whether they will receive it at all, it can be said that their interests collectively are in possession. On the other hand, if the trustees not only have a discretion as to the proportions in which they will distribute the income but also a discretion as to whether they will distribute it or accumulate it, then it would seem from *Re Beckett's Settlement* [1940] 1 Ch. 279 that the interests of the persons entitled under the discretionary trust are merely *spes successiones* and are not in possession. As indicated above, this can make no difference where the death is the death only of one of the discretionary class, but it can make a difference where discretionary trusts as a whole are limited to cease on a death and part of the settled property has been released before that death.

A disclaimer of an interest takes effect *ab initio* so that the interest never becomes an interest in possession and hence the present provisions cannot apply. Thus, if property is left to A for life with remainder to B and A disclaims his life interest, there will be no duty payable under these provisions on his death whether or not there is any exemption under subsection (2). It is possible for the Crown to argue that the disclaimer of an interest amounts to the extinguishment at the expense of the deceased of a debt or other right within the Finance Act, 1940, s. 45 (2), and that the measure of the benefit taken by the remaindermen is the actual amount of income which the erstwhile annuitant or life tenant would have taken up to the date of his death had he not disclaimed. In practice, however, no claim is made under this head.

"*Has been disposed of or has determined*"

It is sufficient that the limited interest has been disposed of or determined in any conceivable fashion other than by the effluxion of a fixed period of time at the end of which it is limited to cease. The most obvious case is surrender or release by the annuitant or life tenant, but there is equally a determination or partial determination where his interest ceases on bankruptcy or marriage if it is so limited to cease, or where it ceases by forfeiture by reason, for example, of the making of an order under the Trading with the Enemy Act, 1939 (see *Re Gourgu* [1943] 1 Ch. 24), or where it ceases on the exercise of an overriding power of appointment or on the exercise by the trustees of their statutory powers of advancement of the remanderman or otherwise. Furthermore, it suffices for the purposes of imposing a charge that the disposition is effected by associated operations (see Finance Act,

1940, s. 59) or through the medium of a company under the control of the life tenant or annuitant (see s. 50 (8) (iv) *ibid.*) and it is provided by the amendments which were made in the Finance Act, 1950, s. 43, that duty is equally attracted if the disposition or determination is effected by a series of transactions rather than by a single transaction. The niceties of such involved cases can best be appreciated by a perusal of *Att.-Gen.* v. *St. Aubyn* (*No. 1*) [1950] 2 K.B. 451, and *St. Aubyn* v. *Att.-Gen.* (*No. 2*) [1952] A.C. 15, and there is little advantage to be had from summarising those decisions here, particularly since the first one is affected by the amendments introduced by the Finance Act, 1950, s. 43, which had no application in that case.

It is, however, necessary that the limited interest should have been disposed of or determined, and it is not sufficient, to bring about a charge, that it should have been enlarged or that there should have been some charge in the property over which it existed.

Enlargement of the Limited Interest

If A, the annuitant or life tenant, releases his interest to B, the remainderman, whether by way of gift or sale, then clearly the limited interest has been disposed of and, unless the liability is saved by subsection (2), duty will be payable on the property over which it existed. Furthermore, if the release was by way of sale, the consideration money paid to A, unless he has spent it or otherwise disposed of it, will form part of A's free estate on his death. If, however, B conveys his reversion to A it is clear that the limited interest has not been disposed of, and it is now accepted by the Commissioners of Inland Revenue that it has not been determined but has been enlarged from a limited to a greater interest. Accordingly, no duty can become chargeable under the Finance Act, 1940, s. 43, on A's death, and A's free estate will be reduced by the amount of the consideration money payable to B. To the extent that the consideration money may have fallen short of the actuarial value of B's reversion, there will have been an element of gift from B to A and this might attract estate duty on B's death within five years.

Accordingly, where it is desired to save the estate duty prospectively payable on the death of the annuitant or life tenant, it is necessary that the transaction should take the form of a purchase by the annuitant or life tenant of the reversion expectant upon his limited interest, and care should be taken that the price paid is the full actuarial value of the reversion. This latter is in practice

important not so much to avoid any possible claim on the reversioner's death, because in many cases the reversioner is of a younger generation than the annuitant or life tenant, but rather to ensure that the latter's free estate is diminished by the greatest possible amount. Of course, this must not be overdone: if the reversioner receives more than the actuarial value of his reversion there may be an element of gift by the annuitant or life tenant to the reversioner.

Great care must be taken, however, to ensure that there is in fact an enlargement of the limited interest, and this can be difficult if the annuitant or life tenant is relying upon finding the purchase price of the reversion out of the property to be released from settlement. An illustration may perhaps make the point clear. Suppose a fund of £10,000 of Consols to be settled upon A for life, remainder to B. Suppose the actuarial value of B's interest to be £3,000. Now if A pays B £3,000 from his free resources and takes a conveyance of the reversion, he, A, from the date of that conveyance is the absolute owner of the £10,000 of Consols: the life interest has been enlarged to an absolute interest, and what A does with those Consols he does as absolute owner of them and cannot affect the nature of the transaction by which he acquired them. He might have sold £3,000 worth of industrial shares to buy out B, and he might, when he has become absolute owner of the Consols, sell sufficient of them to buy back the industrial shares he sold: he might have borrowed the £3,000 from a friend, or, notwithstanding the economic policies of the Treasury, from his bank, and might sell some of the Consols to repay the loan. In either case he has acquired the absolute ownership of the Consols so that there is an enlargement and the transaction is outside the Finance Act, 1940, s. 43. But suppose there is a fund of £10,000 of cash and, on B's conveying the reversion to A he, B, takes £3,000 of that cash in satisfaction of his claims. It is impossible for A to suggest that his life interest in that £3,000 has been enlarged to an absolute interest for the simple reason that he has never acquired absolute ownership of it. The same principle applies where the fund is of Consols and, on the conveyance by B of his reversion he, B, takes enough of the Consols to satisfy the agreed purchase price. Furthermore it is possible for the Commissioners to challenge the transaction, and in fact they will, if the purchase money is, by arrangement with the trustees, raised out of the settled funds in advance or if it is borrowed on the security of the settled funds or of any interest therein.

The rule is therefore, where it is desired to establish an enlargement, that the purchase price paid to the reversioner must be found

by the annuitant or life tenant independently and it must not be raised out of or borrowed upon the security of the settled funds or any interest therein or borrowed in any way from the trustees of the settlement. This latter point acquires especial importance where the annuitant's or life tenant's bankers are also the trustees of the settled funds.

It is convenient at this point to observe that if money is borrowed to purchase the reversionary interest it is necessary, if there is any possibility that the property formerly settled may devolve upon the former owner of the reversion, that the loan be repaid before the borrower's death. If it does so devolve and if the loan is outstanding on the death of the borrower it will not be deductible from his estate for estate duty purposes. See the Finance (1909–10) Act, 1910, s. 57.

Division of the Trust Property

It will be apparent from what has been said that in all cases the annuitant or life tenant should make a clean purchase of the reversion from the reversioner and the trustees should thereupon transfer the whole settled property to him, the reversioner having no further interest therein since he has already received the consideration money for the sale of his interest. It is necessary, however, to consider what is the position if this procedure is not carried out. The simple case, where the reversioner has purchased the limited interest, has already been considered. There remain two other alternatives: one has been mentioned, where the annuitant or life tenant purchases the reversion and the purchase price is satisfied out of the settled property before, or *eo instanti* with the time the limited owner acquires absolute dominion over any of it: the other is where there is no purchase and sale but the interested parties simply agree to divide up the settled property according to the actuarial value of the respective interests. Now it is very difficult to see any substantial difference between the two: in the one case A in effect says to B "Your interest is worth £3,000, I will buy it and pay you by transferring to you £3,000 of the settled property, keeping the rest": in the other A in effect says "Your interest is worth £3,000, you take £3,000 worth of the settled property and I will take the rest and we will tell the trustees that their duties are at an end."

The practice of the Commissioners of Inland Revenue in the second instance, where the parties divide up the property without any purchase and sale, is to charge duty under the Finance Act, 1940, s. 43, only on that part of the property taken by the remainderman and to charge duty on that part taken by the

annuitant or life tenant only to the extent that it passes or is deemed to pass in the ordinary way. The practice where the purchase price is discharged out of the settled property is not so easy to discern. Certainly, and very rightly, the Commissioners regard such a transaction as involving a determination of the limited interest, as indeed does a division of funds, but it is not clear to what extent they regard the life interest as determined. Certainly any life interest existing over the property paid to the reversioner has determined because the former annuitant or life tenant has no further interest over that property but it can equally be said that the life interest existing over the property which is reduced into the absolute ownership of the annuitant or life tenant has been enlarged. It may be that the true answer might depend upon whether one regards a limited interest as subsisting over a trust fund as a sort of quasi-corporate entity or whether one regards it as subsisting over the property subject to the trusts. The former view is less fashionable since *Sneddon* v. *Lord Advocate* [1954] A.C. 257 and in any case does not seem to fit very well with *Archer-Shee* v. *Baker* [1927] A.C. 844 although it still has its adherents. See, for example, the views of Upjohn J. mentioned below at p. 462.

Whether there would be any practical difference between the effects of the two views would depend very largely upon whether, apart from section 43, the property taken by the erstwhile life tenant would have passed or be deemed to pass on his death anyway. Suppose the fund to have consisted of £10,000 of Consols and the life tenant to have retained £6,000 of them using the rest to satisfy the purchase price. If his life interest in those £6,000 of Consols is treated as determined then they will be deemed to pass on his death under the Finance Act, 1940, s. 43: if he still owns them at his death they will pass on his death under the Finance Act, 1894, s. 1 and, by section 7 (10) *ibid.* there can be only one charge. But if he has disposed of them other than by a gift within five years of his death, they will not pass independently of section 43 although the proceeds of their sale may so pass and therefore the charge under section 43 would be effective. If they have been given away within five years of the death they will be deemed to pass by the Finance Act, 1894, s. 2 (1) (c), and again section 7 (10) *ibid.* will prevent a double charge.

Certain Dealings with Annuities

A will sometimes directs that the executors shall purchase an annuity for a beneficiary and sometimes gives the executors an express power to purchase an annuity if they think fit to do this,

rather than allow the annuity to be charged upon the residuary estate. In either case the purchase is not regarded by the Commissioners of Inland Revenue as determining an annuity bequeathed by will and charged upon the estate but rather to be a mere carrying into effect of the intentions of the testator and accordingly such a transaction will not give rise to any liability under section 43.

Sometimes, however, an annuity is in terms charged upon the residuary estate or upon an annuity fund to be appropriated for that purpose by the executors without any direction or express power to purchase an annuity: in these cases it is still possible to secure the annuitant's rights by the purchase of an annuity but only if all the interested parties consent to that course being adopted. Whether such a course will effect a determination of the original annuity depends upon the precise transaction which is effected. If the annuitant agrees to the purchase of an annuity payable to him, and thenceforth looks to his contractual rights under the annuity contract to the exclusion of his rights against the executors or trustees, then this does amount to a determination of his original annuity and estate duty will be chargeable under section 43, and the Finance Act, 1894, s. 2 (1) (b), on the annuitant's death, at any period of time, because the purchased annuity will constitute a reservation of a benefit to him. If, however, the transaction takes the form that the executors or trustees purchase an annuity payable to themselves so that the annuitant still looks to them for payment but they find the money to pay him, not from the income arising upon the estate, but rather from the annuity payments made to them, this will be regarded merely as a change of security for the annuity and no duty will be payable under the Finance Act, 1894, s. 2 (1) (b), because when the original annuity payable by the will ceases on the death of the annuitant so does the purchased annuity payable to the trustees, with the result that no benefit arises or accrues to the estate on the death of the annuitant. Of course, a benefit arises or accrues to the person who has granted the annuity but there is no property passing or deemed to pass and therefore no charge for duty. The above-mentioned principles are apparent from *Re Beit's Will Trusts* [1952] Ch. 53, in which case the trustees had purchased the annuity, not from an insurance office, but from the residuary beneficiaries, which fact however did not and does not affect the principle.

The Exemptions from Charge

Section 43 (2) as amended provides certain exemptions from the charge under section 43 (1). If the annuitant or life tenant

dies within five years of the disposition or determination then there will be no exemption and such duty as may become chargeable by reason of the provisions already discussed will be payable. If the period of five years has elapsed, however, no duty will be payable if bona fide possession and enjoyment has been assumed as mentioned at page 450 above.

This provision is obviously very similar to that affecting gifts *inter vivos* and, as in the cases of gifts *inter vivos*, it is sufficient if the benefit reserved has been surrendered more than five years before the death. But in the matters with which we are concerned, the provision of section 43 (2) (a) is supplemented by those of the Finance Act, 1950, s. 43 (2) providing that bona fide possession and enjoyment of the property shall not be deemed to be assumed, etc., if at any time thereafter the erstwhile annuitant or life tenant has a benefit by virtue of any associated operations as defined by the Finance Act, 1940, s. 59, and it will suffice to revive a charge under section 43 if, after the expiration of five years during which the erstwhile annuitant or life tenant has been excluded from benefit, there should be some associated operations by which he attains a benefit.

It is provided by section 43 (2) (b) that if there has been a partial determination and five years have elapsed the property will not become chargeable by reason only of the fact that the erstwhile annuitant or life tenant retains some benefit, by virtue of the provisions of the original instrument conferring his limited interest, in that part of the property over which that interest has not been determined. Thus, if an annuitant has an annuity of £1,000 per annum until marriage and thereafter £750 per annum and if five years have elapsed since his marriage, he will not be treated as having retained an interest in respect of the £250 annuity which has determined by reason of the fact that he still has an annuity of £750 chargeable upon the trust funds. Where a life tenant has an interest in a fund and he releases his interest over, say, two-thirds of that fund and five years have elapsed, he will not be regarded as having retained a benefit, etc., by reason of the fact that he still has a life interest over the other two-thirds of the fund. One may observe that such a provision is clearly necessary in the case of annuities which are charged generally upon the whole fund. But whether it is strictly necessary in the case of life interests which are determined *quoad* part of the property subject thereto seems to depend upon whether one takes the view that a trust fund is, as it has been called at page 456 above, a sort of quasi-corporate entity.

The most usual cases of a retained interest are those where the

erstwhile annuitant or life tenant, as part of the transaction whereby his interest is determined, obtains from the remainderman a covenant to pay him an annuity, or where, when the settled property is divided, the annuitant or life tenant does not take a capital sum but instead takes some form of annuity provided for him by the trustees out of the settled fund.

Where, when the annuity or life interest is determined, the property is actuarially divided between the interested parties, and the erstwhile annuitant or life tenant takes his appropriate capital sum and uses it to purchase an annuity, then, as in the case where no such annuity is purchased, duty is charged under section 43 only upon that part of the fund taken by the remainderman. It appears, however, that where, having received his capital, the annuitant or life tenant elects to purchase his annuity from the remainderman, then duty is claimed upon the whole of the settled property, presumably on the basis that the purchase of the annuity from the remainderman is an associated operation. It is very difficult to see why the purchase of an annuity from a third party is not equally an associated operation within the definition of that term contained in the Finance Act, 1940, s. 59, and it may be that the restriction of the claim in such cases is purely concessionary.

The Effect of a Charge

It will be recalled that, if there has been a disposition or determination within subsection (1) which is not excepted by subsection (2), then, if, had there been no such disposition or determination of the annuity or life interest or of any interest expectant thereon or subject thereto, the property in which the annuity or life interest subsisted would have passed or would have been deemed to pass under the Finance Act, 1894, s. 1 or s. 2, such property shall be deemed so to pass or to be deemed to pass notwithstanding the disposition or determination. Before considering the substantial effect of this one might observe the provision "or of any interest expectant thereon or subject thereto." These words were added by the Finance Act, 1950, s. 43, and Schedule VII, Part I (2), and their meaning is not entirely clear. It may be that they are intended to meet in advance any argument to the effect that, even if there had been no disposition or determination of the annuity or life interest, the property might not have passed because the remainderman might have conveyed his interest to the annuitant or life tenant thus bringing about an enlargement. However that may be it will be seen that the substantial effect of the provision is that there is to be deemed to pass that property which would have

passed or have been deemed to pass had there been no disposition or determination, and one must consider what is meant by "that property."

There are really three cases to be considered. Firstly, where as a result of the disposition or determination the funds cease to be settled at all, as will be the case where there are limitations to A for life remainder to B and A's life interest is disposed of or determined. Secondly, where notwithstanding the disposition or determination the funds remain settled, as where property is settled upon A for life remainder to B for life remainder to C and A's life interest is disposed of or determined leaving the property still settled upon B for life with remainder to C. Thirdly, where the disposition or determination is not over the whole or a part of the settled property as such but takes the form of raising thereout a specified sum. This will most commonly arise where the annuity or life interest is subject to an overriding power of appointment or a power to advance out of capital and a fixed sum is appointed or advanced.

The first type of case was considered in *Iveagh* v. *I. R. C.* [1954] Ch. 364, where it was decided that the property which passed or was deemed to pass was the actual property subject to the annuity or life interest at the time of its disposition or determination valued, since it is deemed to pass on the death of the erstwhile annuitant or life tenant, as at the date of his death. It will be seen that this principle is precisely the same as the basis of charge under the Finance Act, 1894, s. 2 (1) (c) and the Customs and Inland Revenue Act, 1881, s. 38 (2) as amended by the Customs and Inland Revenue Act, 1889, s. 11 (1). It will be remembered that if the deceased has given away property within five years of his death estate duty is chargeable upon that property in the state in which it is at the time of his death and this whether or not the donee has sold or otherwise disposed of it. If it has ceased to exist no duty will be payable; if it has depreciated in value less duty will be payable and if it has appreciated in value more duty will be payable. In exactly the same way where property has ceased to be settled as a result of a disposition or determination it is that property existing at the time of the disposition or determination valued at the date of death which is chargeable under the present provisions. If it has ceased to exist or if, for instance, it consisted of foreign immovables it escapes duty entirely: if it consists of shares in a company and the value of those shares has depreciated by reason of a bonus issue then it is only the original shares so depreciated which are liable to duty; nothing can be charged upon the bonus shares since they were

never the subject of the annuity or life interest. (Compare *Att.-Gen.* v. *Oldham* [1940] 2 K.B. 458.)

The second type of case where the property continues to be settled has not been the subject of judicial decision and in *Iveagh* v. *I. R. C.* (*supra*) Upjohn J. appeared to take the view that if he were approaching the matter without authority he would have regarded the trust fund as a continuing entity for so long as it continued to be settled, with the result that duty would be charged, not upon the assets as they were when the relevant limited interest was disposed of or determined, but rather upon the assets remaining in the trust fund at the date of death if that trust fund was still subsisting or upon the assets which constituted that trust fund at its determination if it had determined between the date of the disposition or determination of the limited interest and the date of the death. Whilst expressing this view, which it is understood has been adopted by the Commissioners of Inland Revenue, the learned judge recognised that when the matter fell to be decided the decision would be influenced very much by the speeches in *Sneddon* v. *Lord Advocate* [1954] A.C. 257 and, as he found what he described as a "high judicial conflict" between the respective views of Lord Morton and of Lord MacDermott in that case, he was careful to leave the question open. In view of that judicial caution it may be as well to leave it open here as well.

The third type of case was considered in *Re Joynson* [1954] Ch. 567. There fixed sums had been appointed but had been satisfied to some extent by the transfer of certain trust investments. It was held that, just as estate duty on a gift *inter vivos* of a sum of money is charged, as it were, on the face value of the sum given no matter what has happened to it, so, where a specific sum is released from the settlement, duty is chargeable on that specific sum.

When it has been established what is the property which, by section 43 (1), is deemed to pass or to be deemed to pass as though there had been no disposition or determination, estate duty is charged thereon as though there had been no determination or disposition and as though the limited interest had subsisted over that property at the date of death. To the extent that the property is agricultural land or plant and machinery used in a business or any other property attracting duty at a reduced rate it will be chargeable at that reduced rate and to the extent that it consists of timber or of chattels certified to be of national interest, etc., payment of duty may be deferred in the ordinary way appropriate to such chattels. Finally, it may be observed that a property only becomes chargeable by reason of these provisions if in fact it would have passed or been deemed to have passed had

there been no disposition or determination. Accordingly, if it is exempted for some entirely independent cause then it will not be brought into charge by reason of there having been a disposition or determination. A simple case is to be found where property has borne estate duty on the death of a husband and is settled upon his widow for life, she not being competent to dispose of it, with remainders over. If the widow's life interest is disposed of or determined there will be no charge for duty because, quite apart from such disposition or determination, the property would in any case have been exempted. Another case is where property is settled upon A for life with remainder to the settlor and the various conditions of the Finance Act, 1896, s. 15, are fulfilled: if the life interest is disposed of or determined during the settlor's lifetime no duty will be chargeable upon the property.

Accountability for Duty

Before the Finance Act, 1950, there was some considerable doubt as to who, under the Finance Act, 1894, s. 8 (4), would be accountable for any duty payable by reason of the Finance Act, 1940, s. 43. Accordingly the provisions of section 8 (4) have been supplemented by the Finance Act, 1950, s. 44. It is provided by section 44 (1) that where duty is chargeable under the Finance Act, 1940, s. 43, that duty shall be accounted for, if the settlement under which the interest subsisted is in existence at the date of the death of the erstwhile annuitant or life tenant, by the trustees of that settlement for the time being by which one must suppose to be meant the trustees at the time of the death, or, if the settlement has ceased to exist at the date of the death, by the persons who were the last trustees of the settlement. This provision is perfectly clear where there is in fact one settlement and one settlement only but it may give rise to difficulty where one document, be it a will or a settlement strictly so called, creates separate trusts of separate properties. Thus, if by one document Blackacre is settled on A for life remainder to B and Whiteacre is settled on C for life remainder to D and if A's interest in Blackacre is determined, it can be said that the settlement of Blackacre has come to an end, so that the persons accountable will be the trustees at the time of the determination of the settlement of Blackacre and not the trustees of the remaining part of the settlement, Whiteacre, at the time of the death. On the other hand if Blackacre and Whiteacre are settled together to pay the income to A for life with remainder as to Blackacre to B and as to Whiteacre to C it may be said that there is only one settlement which has not determined

so that the accountable parties are the trustees of what remains in the settlement at the time of the death. In *Re Joynson* (*supra*) the trusts affecting some part of the settled property were determined whilst those affecting other parts remained on foot and it was held that the trustees at the date of the death were accountable. Having regard to the infinite variations of trusts that may be declared it seems impossible to suggest any very definite rule save that where there are separate funds subject to separate trusts and an interest in one of those funds is determined with the result that that fund ceases to be settled, then the trustees at the time of the determination would appear to be accountable. In all cases where there is not such a complete separation it would seem from *Re Joynson* (*supra*) that the trustees at the time of the death must regard themselves as liable to account.

Section 44 (2) provides an exception, which applies both to the accountability under that section itself and also to such accountability as there may be under the Finance Act, 1894, s. 8, where a limited interest is in part determined by reason of an advancement to an infant who does not in the events which happen become absolutely and indefeasibly entitled to any share or interest in the property to which he was presumptively entitled at the time of the advance. This exception only applies where the advancement does not exceed one half of the infant's presumptive share and the official practice as set out in a press notice of 1951 is to regard that as meaning one half of the presumptive share as it appeared to be at the date of the advancement. Thus, if an infant is entitled to £20,000 subject to defeasance by the exercise of a power of appointment then, so long as the power of appointment has not been exercised, the trustees may safely advance up to £10,000 without forfeiting the protection of section 44 (2). If, however, the power of appointment has been exercised over some part of the funds before the advancement is made then they may safely advance only one half of what remains unappointed at the time of the advance.

It is to be noticed that the exemption only applies where the infant does not, in the events which happen, become absolutely and indefeasibly entitled to any share or interest in the property. On a strict construction of those words an infant who became entitled to an annuity or a life interest, which annuity or life interest was not defeasible on the happening of any event, would become absolutely entitled to an interest in the property although not to a share in the property. It appears, however, from the Board of Inland Revenue press notice of June, 1951, that the official practice is not to construe the provision in this way.

Accordingly, if in the events which happen the infant becomes entitled to a limited interest only the trustees are not accountable in respect of any advance unless, indeed, the advance exceeded one half of the presumptive share. On the other hand if in the events which happen the infant does become absolutely entitled to some part of the settled property, however small a part that may be, the trustees are accountable in respect of any charge which arises from the advancement even though that advancement was less than one half of the presumptive share. It would appear that if the trustees should advance more than one half of the presumptive share then they will be liable to account for any duty in respect of the whole of that advancement and not only in respect of the excess over one half.

Section 44 (4) gives the accountable party a lien in respect of the charge for duty and the cost in respect thereof on any property which is or has been comprised in the settlement.

These provisions give rise to a considerable practical difficulty. The object of determining a limited interest is usually to enable the funds to be released from the settlement and handed over to the beneficiaries; the trustees, however, are faced with the liability for duty which, depending upon the amount of aggregable property owned by the annuitant or life tenant, may range up to 80 per cent. of the funds released and indeed might amount to more if the rates of estate duty were to be increased. Accordingly, by the Finance Act, 1950, s. 44 (3), it is provided that where the trustees may become accountable for estate duty chargeable by reason of the Finance Act, 1940, s. 43, and where it is intended that the property should be released from the settlement, the trustees may apply to the Commissioners of Inland Revenue for a certificate of the amount which in the opinion of the Commissioners may properly be treated as the prospective amount of the duty. If such a certificate is issued and if the trustees have given the Commissioners all the information and evidence which they require, then neither the then existing trustees nor their successors as trustees are to be accountable for any duty in excess of the amount appearing on the face of the certificate. Such certificate, however, does not affect the Commissioners' rights against the beneficiaries. There is no positive obligation upon the Commissioners to issue such a certificate but in practice they will always do so, if they are supplied with adequate information as to the financial circumstances of the annuitant or life tenant so that they may make a reasonable estimate of the amount of aggregable property which there is likely to be. In practice trustees will very often apply for such a certificate, giving details of the transaction involved, where

in fact that transaction amounts, or is thought to amount, to an enlargement rather than a determination of the life interest, thus perhaps eliciting from the Commissioners a confirmation that they take the view that there is no prospective liability.

In applying for such a certificate the trustees should supply not only all the facts relating to the disposition determination but should also supply all the information they can acquire as to the means of the annuitant or life tenant and should state what inquiries have been made and what are their means of knowledge, indicating what evidence, if any, can be produced to support their statements.

When such a certificate has been issued the trustees may set aside a fund to meet the prospective liability and may safely release the rest of the property in their hands. Upon the wording of the statute the trustees might well be in difficulty if they invested that fund in securities which depreciated in value between the date of its appropriation and the date of the death, but where such a fund is invested in trustee securities the Commissioners are prepared, by concession, to limit their claims against the trustees to the amount of that fund at the date of death or the amount shown in their certificate whichever may be the smaller, unless the trustee has in fact other assets of the settlement in his hands. If they have such assets those assets will be available to make up the value of the appropriated fund to the amount appearing in the certificate but the trustees cannot be called upon to pay duty out of such assets to an amount beyond that appearing in the certificate.

It is understood that when five years have elapsed the Commissioners, though they are under no sort of statutory duty to do so, may, if they can be satisfied that the erstwhile annuitant or life tenant has during the whole five years been excluded from the property or from any benefit as mentioned in the Finance Act, 1940, s. 43 (2), and that it is likely that that exclusion will continue, give to the trustees an assurance that the appropriated fund may safely be released.

LIFTS

By V. G. Wellings, m.a.(Oxon.), Barrister-at-Law

The purpose of this article is to examine a number of problems, in the general law relating to real property, for which lifts are responsible. Some of these problems, it is true, are not due to any inherent peculiarity which lifts as a class may possess but are caused by difficulties in the interpretation of particular statutes or contractual relationships. Thus, at the present day, a well-known question is whether the provision of a lift is a " service " within the meaning of the Housing Repairs and Rents Act, 1954, and whether a landlord of a flat to which the lift gives access can claim an increase of rent in respect of the increased cost of providing the lift. Similarly, a landlord of a block of flats who has been rated in respect of the whole block can deduct the cost of repairing a lift in order to arive at the gross value for rating of a particular flat; but can the same landlord, despite differences in methods of assessment, make a corresponding deduction in order to arrive at the gross annual value for the purposes of Schedule A tax? The above questions depend for their solutions not upon the intrinsic nature of a lift but upon considerations of interpretation of statutory provisions. An example of a problem which is contractual in nature is whether the tenant of an upper flat to which a staircase and a lift both give access can claim an implied right to use the lift where his lease is silent upon the point.

A lift like a staircase is, in one sense, just another means of access. Unlike a staircase a lift possesses moving parts and it is this feature which naturally causes difficulty in the application of some branches of the law. Thus, is a lift a fixture and, if so, to what extent? Some parts of it may be part of the fabric of the building and others may be chattels. An increasingly popular device at the present time is the creation of " flying freeholds " by dividing the freehold of, for instance, a block of flats horizontally and conveying the fees simple of individual flats. Methods of achieving this result have been suggested in previous issues of *The Conveyancer* and it will have been seen that it is possible without great difficulty to convey with each flat appropriate parts of the staircase, roof and other common parts of the premises. Where the building contains a lift it is equally not very difficult to divide the lift shaft and other stationary parts between individual

flats but what is to be done about the lift car and the other moving parts? Another feature of lifts is that they have a relatively short life whereas the buildings containing them may last for a hundred or more years. Does, therefore, a tenant's covenant to repair, which makes no reference to a lift included in the demise, extend to the lift? If it does so, is the tenant, when the lift wears out, bound to replace it?

These and other problems will be examined in the following pages. This article is, however, not intended to be exhaustive and it is not, therefore, proposed to deal with branches of the law where lifts present no special problems. For the sake of brevity attention will be confined, except where otherwise stated, to modern electric passenger lifts in residential buildings although it is thought that with few exceptions identical principles will apply to older types of lifts, those which carry cargo, and those which serve office premises.

Are Lifts Fixtures?

The principal * parts of a lift installation are believed to be as follows:—

(a) A lift shaft which in the case of modern lifts entirely encloses the installation. This shaft is part of the fabric of the building rather than a fixture properly so-called. In the case of some older lifts the staircase well sometimes serves as a shaft and in such cases the outer frame and grille, known as the lift enclosure, are firmly attached to the fabric of the building.

(b) A pit which is the bottommost part of the lift shaft.

(c) Buffers, known as car and counterweight buffers affixed to the pit floor.

(d) Outer gates affixed to the lift enclosure or shaft.

(e) Four vertical steel guides, known as car and counterweight guides, firmly affixed to the shaft or lift enclosure.

(f) The lift car and counterweight which are connected to each other by wire ropes and to the car and counterweight guides by shoes which prevent the car and counterweight from moving in a horizontal plane but permit them a limited movement in a vertical plane.

(g) The winding gear with motor and brake which are not normally bolted to the freehold but rest by their own

* The following descriptions are based on information readily supplied by Waygood-Otis, Ltd., of Falmouth Road, London, S.E.1, well-known makers of lifts and escalators, to whom the Author and Publishers express their thanks.

weight, and are connected to the car and counterweight by wire ropes.

It is, of course, a question of law whether a machine or article is a fixture but that question depends on the circumstances and extent and purpose of the annexation in each case. The question, therefore, must depend on the facts of each case. However, there can be little doubt that, regarded as a whole, a lift installation has a sufficient degree of annexation for it to be a fixture and that the purpose of the annexation is for the permanent and substantial improvement of the building: see Woodfall (25th ed.), p. 817. Regarded as a whole, therefore, a lift installation is a fixture. Nevertheless, certain parts of the installation, notably the winding gear, the car and the counterweight, may yet be chattels. Taken by themselves these parts probably could not pass the test of a fixture: see *Hulme* v. *Brigham* [1943] K.B. 152. Any part of the installation which is a chattel will, where the installation is demised, be distrainable: see Woodfall, pp. 449, 450, 453 *et seq.*, and 817. Moreover, where the installation was installed by a tenant, such parts would be removable by him.

Res accessoria sequitur rem principalem. The latin maxim does not altogether represent the position in English law, since not every accessory of a fixture is regarded as constructively annexed to the freehold. Things which would otherwise be chattels are regarded as constructively annexed to the freehold only if they are an essential and integral part of the particular apparatus or installation: see *Pole-Carew* v. *Western Counties and General Manure Co.* [1920] 2 Ch. 97; and *Jordan* v. *May* [1947] K.B. 427. Applying the test propounded by Warrington L.J. in the former case, [1920] 2 Ch. at 121, the lift installation would be useless without the winding gear, car and counterweight and vice versa. Although these three items are capable of being removed without disturbing the fabric of the building, they are an essential and integral part of the lift installation and cannot properly be regarded by themselves. A lift installation, therefore, is, both as a whole and having regard to its principal parts, a fixture.

From the foregoing it follows that in a case where the lift was installed by the tenant no part of it is removable by him, even if the lift was installed for some trade purpose. On the authority of *Pole-Carew's* case, *supra*, no part of the installation can be separated from the rest. No part of the installation can be considered as being of a perfect chattel nature before erection and no part, therefore, is removable by the tenant: see Woodfall, p. 821; *Pole-Carew's* case, *supra*, *per* Warrington L.J. at 121; *Dixon* v. *Fisher* (1845) 12 Cl. & F. 312, 330. Moreover, except perhaps in

the case of some of the older types of lifts the installation is not capable of removal without disturbing the fabric of the building and on this ground also no part of the installation can be removed by the tenant.

The Rating and Income Tax Cases

A lift mainly or usually used for passengers is deemed for the purposes of valuation for rating and Schedule A income tax to be part of the hereditament or unit of assessment to which it appertains: see section 24 of the Rating and Valuation Act, 1925, and the Plant and Machinery (Valuation for Rating) Order, 1927; Income Tax Act, 1952, s. 474. For rating and Schedule A purposes, therefore, it is immaterial whether or not a lift is a fixture. For both purposes, however, it is important to ascertain the precise extent of the hereditament or unit of assessment. In a block of flats (or offices) each flat (or suite of offices) which is separately occupied is for rating purposes a separate hereditament even where the landlord was compounded and has been rated in respect of the whole block. But for Schedule A purposes the unit of assessment is the whole block even though the annual value of the whole is determined by reference to the sum of the annual values of the parts. Where, therefore, a lift is provided for the benefit of the tenants of flats in the building the lift is treated as part of the unit of assessment for Schedule A purposes, whereas for rating purposes it is not. It is this distinction which differentiates the two important Court of Appeal cases: *Bell Property Trust* v. *Assessment Committee for the Borough of Hampstead* [1940] 2 K.B. 543, and *Pearl Assurance Co.* v. *O'Callaghan* (1943) 59 T.L.R. 269.

Where the landlord of a block of flats outside London has been rated in respect of the block, in order to ascertain the gross value for rating of each flat no account is to be taken of the value of services which the landlord renders or procures to be rendered to the tenant other than the provision of, or repairs to, or maintenance of the hereditament: Rating and Valuation Act, 1925, s. 68 (1), proviso. Outside London, therefore, if the rent reserved includes payment for the provision of a lift as a service the cost of providing it and the cost of repairs to it are to be allowed for in ascertaining the gross value by reference to that rent (*a*). So far as London is

(*a*) Since valuation for rating depends on the ascertainment of a notional rent paid by a hypothetical tenant the actual rent paid by an actual tenant is not strictly the measure of the gross value, but it is prima facie evidence of it and such rents are frequently made the basis of valuations. For Schedule A purposes the measure of valuation is an actual rack rent, if there is one, and otherwise a notional rack rent: Income Tax Act, 1952, s. 82.

concerned the definition of gross value has no proviso corresponding to that in section 68 (1) of the Act of 1925: see the Valuation (Metropolis) Act, 1869, s. 4 (*b*). However, the measure of the gross value in London as elsewhere is the amount of rent attributable to the occupation of the hereditament; and the *Bell* case, *supra*, demonstrates that if in respect of premises in London the gross value is estimated by reference to a rent actually paid any portion of that rent which is attributable to matters other than the occupation of the hereditament must be ignored.

In the *Bell* case, *supra*, the owners of a block of flats in London had compounded and were rated in respect of all the flats in the block. Each flat was let under an agreement providing for payment by the tenant of a comprehensive sum, described as rent, for the occupation of the flat and the benefit of the services and amenities provided by the owners. It was agreed that the rents actually paid were the measure of the rent which a hypothetical tenant would pay and the only question at issue was what deductions from the amounts of those rents could be made in order to arrive at the gross values of the flats within the meaning of section 4 of the Valuation (Metropolis) Act, 1869. The Court of Appeal, overruling *Pullen* v. *St. Saviour's Union* [1900] 1 Q.B. 138, *held* that (1) the cost to the owners of providing the services, which included the provision of a lift, was deductible from the rents actually paid by the tenants before arriving at the gross values of the flats for insertion in the valuation list; and (2) such deductions might properly include an allowance for a reasonable profit to the owners on the provision of the services and the cost of repairs to and maintenance of the lift and other parts of the building not demised to the tenants. Goddard L.J., reading the judgment of the court, said: "The other sum challenged was £534, which represents the cost of repairs to . . . the common parts. . . . The objection taken to these being allowed was that as deductions for repairs had to be allowed to ascertain the rateable value, it meant that the rateable occupiers, that is, the appellants, would be getting the deduction twice over. But that is not so. To ascertain the rateable value a deduction of 34·3 per cent. from the gross value has been made, and no complaint is now made as to this. As the cost of these repairs was deducted in arriving at the gross rental, they

(*b*) The definition of "gross value" in this section is repealed in relation to future valuation lists by the Rating and Valuation (Miscellaneous Provisions) Act, 1955, which applies the definitions of hereditament contained in s. 22 of the Act of 1925, as amended by s. 5 of the Act of 1955, to London. Consequently, the definition of "gross value" in s. 68 (1) of the Act of 1925 (as replaced by s. 2 (2) of the Act of 1953, where necessary: see *infra*) will in future apply to London.

form no part of the sum on which this percentage has been taken, so they have not been deducted twice, and we think they are matters which quarter sessions might properly take into account in ascertaining the true gross rental." The *Bell* case does not specifically lay down that the admissible deductions might include sums in respect of the cost of electric light and power for the lift, the wages of the lift attendant, the cost of insurance inspection and oiling of the lift, or depreciation of the lift. However, that case is authority for the view that the cost of providing a particular service is a question of fact and there can be little doubt that in fact all the matters mentioned play some part in the make-up of that cost.

It is to be noted that for the purposes of making or altering the first valuation lists made after the passing (July 31, 1953) of the Valuation for Rating Act, 1953, the gross value of a hereditament which is a dwelling-house (which expression by the definition in section 3 (1) includes a flat or flats in a block) is to be ascertained by reference to the definition of "gross value" contained in section 2 (2) of that Act instead of that contained in section 68 (1) of the Act of 1925 and that in section 4 of the Act of 1869. But that definition is not to apply where it would result in a gross value in excess of a value ascertained by reference to the definition contained in section 68 (1) of the Act of 1925 or section 4 of the Act of 1869. The definition in section 2 (2) of the Act of 1953 is, apart from material dates, similar to that in section 4 of the Act of 1869 and, like the latter, it contains no proviso corresponding to that in section 68 (1) of the Act of 1925. Nevertheless, in ascertaining the gross value in accordance with the definition in section 2 (2) of the Act of 1953 by reference to the rent paid under an existing or former tenancy the principle of the *Bell* case is applicable: see section 6 of that Act. In making deductions from the gross rents the landlord's profit on the provision of the lift (or other service) must now, however, be excluded: see section 6 (1). This exclusion is general and applies no matter which definition of "gross value" is appropriate and to this extent section 6 of the Act of 1953 overrules the *Bell* case.

For rating purposes it is clear that in a block of flats there are several hereditaments whether or not the landlord is rated:— (1) each flat is a separate hereditament; (2) the common parts also constitute a separate hereditament although, since there is no exclusive occupation of them, they may not be rateable as such. But for Schedule A tax purposes a block of flats is (where the ownership of the block is not divided) assessed as a whole although the gross annual value of the whole is calculated by aggregating

the gross annual values of the individual flats: see Income Tax Act, 1952, s. 109, Konstam, 12th ed., § 33. In *Pearl Assurance Co.* v. *O'Callaghan* (1943) 59 T.L.R. 269, a number of offices in a block were let to tenants who had the benefit of a passenger lift the upkeep and maintenance of which were paid for by the owners of the block. It was agreed that the formula to be adopted for ascertaining the gross annual value of the block for the purposes of Schedule A tax was to aggregate the rents received from the tenants after deducting therefrom the cost of the services provided by the owners and the amount of rates borne by the owners. The Court of Appeal held that the lift in its nature was essentially a part of the whole hereditament in respect of which the assessment and charge to tax were placed on the landlord; and that the repair and maintenance of the hereditament and, therefore, of the lift, must be effected by the landlord at his own expense in order that the hereditament should command its several rack-rents; accordingly no sum in respect of such items was deductible from the gross rents. Scott L.J., reading the judgment of the court, said ((1943) 59 T.L.R. at 271): "In our opinion, that decision [the *Bell* case, *supra*] does not apply. It was a case where the tenants of the individual flats were primarily responsible to the rating authority, but the landlord had 'compounded.' That liability of his for payment did not touch the tenants' basis of legal obligation. It was still the assessment of the individual flats which was concerned, not of the whole building. The lift there was outside the several hereditaments rated, and its maintenance was, in that case, regarded as a service by the landlord to the tenants of the flats, and was not to be included in the occupation for which the rent was payable by the hypothetical tenant. By Schedule A the charge is put on the landlord in respect of the whole building, and it is, therefore, the annual value of the whole which is the subject-matter of the tax." In the court below it was conceded (see *per* Macnaghten J. 59 T.L.R. at 27) that the wages of the lift attendant, the cost of electric light and power for the lift and also the cost of the insurance, inspection and oiling of the lift were all deductible but, having regard to the *ratio decidendi* in the Court of Appeal, even these items would seem not to be deductible. Of course, Schedule A tax is not paid on the gross annual value but on the net annual value after deducting the percentage repairs allowance under section 100 of the Income Tax Act, 1952. Further, if the cost to the owner of maintenance, repairs, insurance and management (including those attributable to the lift), according to the average of the preceding five years, has exceeded the deduction permitted by section 100, he is entitled,

in addition to that deduction, to claim a rebate of tax paid on the excess: see section 101.

Services Increases in Respect of Lifts

From the cases which have just been discussed it is clear that for any ordinary purpose the provision of a lift is a "service." A rent tribunal has power under section 2 (4) of the Furnished Houses (Rent Control) Act, 1946, in any case where the rent includes payments for services, to approve a rent higher than the rent payable under the contract where, in the tribunal's opinion, the rent ought to include an amount in respect of the increase since September 3, 1939, in the cost of providing such services. Section 12 of the Act of 1946 specifically excludes from the definition of "services" for the purposes of that Act "any privilege or facility requisite for the purposes of access." Whether or not these words are sufficient to exclude the provision of a lift from the definition depends on the precise meanings of the words "privilege," "facility" and "requisite." If, for example, the natural meaning of the word "requisite" is "needed" the exclusion would operate in a case where the only means of access to a flat was by lift and, perhaps, not where access by way of a staircase was also available (*c*). However, for the purposes of argument it will be assumed in this article that the provision of a lift is a "privilege or facility requisite for the purposes of access" and, as such, is not within the definition of "services" in the Act of 1946.

Section 10 of the Housing Repairs and Rents Act, 1954, enables a landlord who supplies services to the tenant of premises controlled under the Rent Acts of 1920 to 1939 to obtain an increase of rent in respect of the rise, over the period September 3, 1939—August 30, 1954, in the cost of the provision of the services where the following conditions are fulfilled:

(1) the standard rent of the premises must be fixed by a letting beginning not later than September 1, 1939; and

(2) the increase of rent must be agreed in writing by the landlord and tenant or, on the application of the landlord, by the rent tribunal constituted under the Act of 1946 for the district in question.

When these conditions are fulfilled the increase of rent is recoverable whether or not the contractual tenancy has first been determined.

The Act of 1954 contains no definition of the word "services"

(*c*) Compare, however, Megarry, *The Rent Acts*, 8th ed., p. 145, text and note 42.

and it has been contended (*d*) that the definition of that word in the Act of 1946 is intended to apply. It is believed that this contention is unfounded (*e*). A perusal of the Rent Acts will show that wherever it has been desired or necessary to define an expression by reference to a definition contained in a previous Act one of two formulae has been adopted:

(1) a statement to the effect that "this Act shall be construed as one with the principal Act: see section 4 of the Notices of Increase Act, 1923, section 20 of the Act of 1923, and section 11 (5) of the Act of 1949 (*f*).

(2) a statement that a particular expression shall have the same meaning as in a previous Act: see section 16 of the Act of 1933; section 8 (2) of the Act of 1938 and, indeed, section 49 (1) of the Act of 1954.

The facts that in the Act of 1954 formula (1) was not adopted and that it was not found necessary in section 49 to define "services" by reference to the definition contained in the Act of 1946 is an indication of some weight that no statutory limitation was intended to be put on the natural meaning of that word. It is admittedly true that in *Lennon* v. *Gibson and Howes* [1919] A.C. at 711, Lord Shaw of Dunfermline said: "In the absence of any context indicating a contrary intention, it may be presumed that the legislature intended to attach the same meaning to the same words when used in a subsequent statute in a similar connection." In that case the Judicial Committee of the Privy Council was considering the meaning of the words "sugar-cane received" in an Australian statute, those words having received a statutory definition in an earlier statute which appears to have been *in pari materia* with the later statute and not merely "in a similar connection." Moreover, it was held that the words as they appeared in the later statute naturally bore the meaning attributed to them in the earlier statute: see *per* Lord Shaw, at pp. 715, 716. The words "in the absence of any context indicating a contrary intention" are, of course, important and it is conceived that very little in the way of such a context is required in order to rebut the presumption. It is submitted that the following points are ample indicia that the word "services" was not intended to have the same meaning as in the Act of 1946 (*g*):—

(*d*) See, for example, Megarry, *op. cit.* pp. 361, 362, 371.

(*e*) Since this article was in proof the Divisional Court has come to the same conclusion: see *R.* v. *Paddington North, etc., Rent Tribunal, ex p. Perry* [1955] 3 W.L.R. 744.

(*f*) The Act of 1939 adopts a variant of this formula: see s. 3 (1).

(*g*) See now *R.* v. *Paddington North, etc., Rent Tribunal, ex p. Perry* [1955] 3 W.L.R. at 751, *per* Ormerod J.

(1) The draftsman did not find it necessary to adopt one of the expedients described above.
(2) The rent tribunal's power under section 40 is derived from subsection (2) of that section and not from the Act of 1946.
(3) That power is an entirely new power in that an increase of rent as determined by the rent tribunal is recoverable during the subsistence of the contractual tenancy *and* in respect of *controlled* premises whereas the better view is that this is not true of an increase determined under section 2 (4) of the Act of 1946, which provision appears to be not a substantive provision in itself but merely incidental to the major provision (which is concerned primarily with non-controlled premises).
(4) Section 40 (2) (b) is couched in different words from those in section 2 (4) of the Act of 1946.
(5) The definition of the word "services" in section 40 is applicable not only to a determination by a tribunal under that section but also to an agreement by the parties, this latter being a provision which has no parallel in the Act of 1946.
(6) The definition of the word "services" in the Act of 1946 really goes only to jurisdiction.

It is to be observed that the word "services" appears in another place in the Act of 1954, *viz.*, section 24 (3) (b) which provides that, for the purpose of determining whether any deduction is to be made from the maximum repairs increase, any part of the recoverable rent for the period in question which may have been agreed in writing between the parties, or at any time determined by the rent tribunal constituted under the Act of 1946, to represent payment for furniture or services is to be deducted from the recoverable rent. In this instance there is even less reason for attributing the same meaning to the word "services" as that in the Act of 1946, since not only are many of the above points applicable here also, but, in addition, there was no occasion before the passing of the Act of 1954 to quantify the part of the rent attributable to services.

In conclusion it is believed that the meaning of the word "services" in the Act of 1954 is intended to depend on the facts of each case and that there can be few if any circumstances in which the provision of a lift is not a "service" (*h*). It is further submitted, on an analogy with the *Bell* case, *supra*, that the cost of providing a service for the purposes of section 40 of the Act of

(*h*) *Ibid.*, at 748, *per* Lord Goddard C.J. at 751–2, *per* Glyn-Jones J.

1954 is a question of fact. On this view it would appear to be open to a rent tribunal, in determining the cost of providing a lift as at 1939 and 1954, to make allowance for the following matters: the cost of electricity and power, routine inspection and maintenance (*h*), repairs, insurance and the wages of the lift attendant, if any. It would also seem proper to take into account an element in respect of depreciation.

The Right to Use a Lift

In *Dikstein* v. *Kanevsky* [1947] V.L.R. 216, C.L.C. 5447, a landlord verbally accepted a written offer from a prospective tenant which was couched simply as follows:—"I hereby offer you to rent from you the front portion of the 6th floor of Leonard House, 46 Elizabeth Street, Melbourne, and pay you a rental of £6 per week. I undertake to pay you six months' rent in advance, equal £156." Nothing was said about the lift but the following facts were proved:—the landlord knew that the tenant intended to use the premises for his business of packing dried fruits and nuts and that for that purpose he would bring into the premises quantities of those articles and would send them out again when packed. The stairs could have been used instead of the lift, but only at great inconvenience and, from an economic point of view, were quite unsuited for the purpose. The ordinary manner of conducting such a business would be to use the lift and, indeed, the use of the lift might be said to be a necessity for the economic conduct of such a business. Moreover, the tenant had previously occupied another part of the same building for the same kind of business and had been accorded the use of the lift to bring his products up and down.

Having found these facts, O'Bryan J., in the Supreme Court of Victoria, Australia, *held* (1) the proper inference from the circumstances and conduct of the parties was that they intended it to be a term of the contract that the tenant was entitled to use the lift for the carriage of such passengers and goods as was reasonably necessary for the conduct of his business; alternatively, (2) without such a term it was impossible to give business efficacy to the contract made unless such a term were implied and therefore such a term would, as a matter of law, be implied.

On its facts *Dikstein* v. *Kanevsky* is a clear case so far as the second part of the decision is concerned, but it is permissible to doubt the correctness of the first part. No doubt the words of a contract which is wholly written may on their proper construction embrace a right to use a lift but then the right is express and not

implied. However, to hold that the parties' conduct may, by interpretation, produce a similar result might in some cases cut across the strictness of the rules relating to implied terms as laid down in the cases (*i*) since a term evolved by such inference can hardly be express.

In the case of a flat to which a lift gives access the facts would have to be very unusual and compelling in order to justify a right to use the lift being implied. In the case of a flat to which both a lift and a staircase give access it will, it is thought, be rare that it is necessary as a matter of business efficacy to imply a right to use the lift. Examples of circumstances in which it might be necessary to imply such a term are where it is known to the landlord that the tenant is physically incapable of climbing the stairs or where the only means of access is by lift. In the latter case different considerations apply and, quite apart from implied terms, it is possible that there may be an easement of necessity (*k*).

In *Dikstein* v. *Kanevsky, supra*, it was found as a fact that the lift was used by the tenant at the time when the tenancy was granted and for more than a year thereafter. The tenant sought to say that the grant of the tenancy thereby carried with it the right to use the lift as an easement or quasi-easement appurtenant to the premises let and that this right of user was a right of property known to the law. O'Bryan J. doubted this and said ([1947] V.L.R. at 219): "Any such right . . . is in essence and substance different from a right of way. . . . If the plaintiff has a right of some sort to use the lift, in order that such a right may be of any practical value, the defendant must be under an obligation to service the lift and have it in running order. This involves provision of power, maintenance and supervision and the compliance by him with public requirements. Such a right, therefore, is essentially a right *in personam* and is not an easement or quasi-easement or a right appurtenant to land which will pass by implication or operation of law upon a grant of an estate in the land." If the view which the writer has expressed on the question whether a lift is a fixture is correct, there would seem to be no reason in logic why an easement over a lift should not be capable of existing. The Court of Appeal has held (*l*) that the right to use a lift carries with it the right to expect that the owner of the

(*i*) See, for example, *The Moorcock* (1889) 14 P.D. 64; *Reigate* v. *Union Manufacturing Co.* [1918] 1 K.B. 592, at 605, *per* Scrutton L.J.; *Shirlaw* v. *Southern Foundries* [1939] 2 K.B. 206, at 227, *per* MacKinnon L.J.; [1940] A.C. 701.

(*k*) See Woodfall, 25th ed., p. 657 (staircase).

(*l*) *De Meza* v. *Ve-Ri-Best Manufacturing Co.* [1952] C.P.L. 753. See also Woodfall, 25th ed., p. 657 (staircase).

lift will provide a working lift. These two points do much to destroy the validity of O'Bryan J.'s observations, *supra*. It is well known that the classes of easements are not closed. Further, it has recently been held that a *jus spatiandi* may be an easement known to English law (*m*). In the light of these considerations that as between a freehold flat and a lift in different ownership the right to use the lift is capable of being an easement and, as between landlord and tenant, the same is true if the right is of necessity.

It will rarely be necessary to consider whether a right to use a lift is in fact an easement since in practice such a right, if it is *capable* of being a right known to the law, will usually pass by virtue of section 62 of the Law of Property Act, 1925. Section 62 (2) provides that a conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall operate to convey, with the land, houses, etc., all liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, etc., conveyed or at the time of the conveyance demised, occupied or enjoyed with the land, houses, etc. "Conveyance" includes a "lease" and (unless the term exceeds three years) a lease under hand only, an oral lease and an agreement for a lease capable of specific performance: see sections 52 (2) (d), 54 and 205 (1) (ii) of the Act of 1925; *Borman* v. *Griffith* [1930] 1 Ch. 493; *Wright* v. *Macadam* [1949] 2 K.B. 744. In order to rely on section 62 it is not necessary to prove an easement properly so-called or indeed that the right claimed appertained or was appurtenant to the land. It is necessary only to prove that the right claimed was a liberty, privilege or other advantage which at the time of the "conveyance" was in fact enjoyed with the land, house, etc. Nevertheless, it is necessary to show that the right claimed is a right known to the law, namely that it is *capable* of being an easement. The right must not be precarious in the sense that it cannot be granted at law: see *per* Jenkins L.J. in *Wright* v. *Macadam*, *supra*, at 751. The remarks of O'Bryan J., *supra*, might suggest that the right to use a lift is precarious in this sense but it is hoped that those remarks have been shown to be incorrect. Provided that the right is not "precarious" it is immaterial that it was granted by permission and that that permission was revocable: *Wright* v. *Macadam*, *supra*. In the view of the writer a right to use a lift is capable of passing under section 62.

(*m*) See *Re Ellenborough Park* [1955] 3 W.L.R. 91, where the important principles are discussed.

Lifts and Freehold Flats

An interesting article entitled "Sale of Freeholds 'Floating in the Air,'" which appeared on p. 5 of the *Manchester Guardian* for February 28, 1955, shows that in London alone in 1953 fifty flats were conveyed freehold, that in 1954 the number had risen to 250 and that this practice throughout the country is rapidly increasing in popularity. The methods of overcoming the attendant difficulties have been discussed in previous issues of *The Conveyancer*: see the precedents (1953) 17 *Conveyancer* 501 *et seq.*, and the article by Mr. Edward George in (1955) 19 *Conveyancer* 3 *et seq.* It will be seen from the latter article (pp. 7 and 8) that it is desirable to convey as much as possible of the common parts of the block to individual flat owners. Whilst it will be possible to apportion most of those parts between the individual owners, for obvious reasons this is not possible in the case of a lift. The lift, therefore, in its entirety will have to remain the property of the vendor or be conveyed to a service company whose members consist of the flat owners (*n*). In return for rent or rentcharge payable by each flat owner the vendor or service company will then grant or lease an easement (*o*) over the lift to each flat owner. The vendor or service company will covenant to maintain the lift in working order and to be responsible for regular inspection of it and execution of necessary repairs to it. Preferably the covenant to repair should include an express obligation to renew the lift at the end of its life. For other points (which have no special bearing on lifts) relating to the conveyance of freehold flats, see the precedents and article referred to, *supra*.

The Repair of Lifts

(1) *By owners or landlords*

As already stated, where one person has the right to use a lift, the owner or landlord, as the case may be, has an implied obligation to maintain the lift as a working lift and to do any repairs necessary to maintain the lift in that state; failure to implement this obligation amounts not only to a breach of obligation but also to a derogation from the grant: see *De Meza* v. *Ve-Ri-Best Manufacturing Co.* [1952] C.P.L. 733.

(2) *By tenants*

No difficulty, of course, arises where a tenant's repairing covenant expressly refers to the repair of a lift demised to him or where that

(*n*) See precedents in (1953) 17 *Conveyancer* 501 *et seq.*

(*o*) See pp. 478–9, *supra*, where the question whether the right to use a lift is capable of being an easement is discussed.

covenant contains a fair wear and tear clause. Where such a covenant makes no mention of the lift and contains no fair wear and tear clause it will oblige the tenant to execute necessary repairs to the lift provided that the lift is part of the premises in the sense of being a fixture. The writer has already expressed the view that the whole of a lift installation is a fixture and, if this view is correct, such a repairing obligation will extend to the lift. In any event it will do so also if the covenant requires the tenant to repair the landlord's "fittings."

Lifts have relatively short lives. It is understood that some of the older lifts had or have an average life of fifty years, but that modern lifts, because of their greater complexity, have an average life of a mere twenty-five years. There may be cases, therefore, where the lift wears out long before the comprising premises or before the lease in question comes to an end. Where this happens does a tenant's covenant to repair which relates to the lift require him to replace the lift? It is well known that the tenant's duty under a repairing covenant is to *repair* and not to renew the premises but that repair includes renewal of subordinate parts of the premises. If the tenant is obliged to replace the lift the extent of that obligation is, however, limited. It would not, it would seem, require him to replace an old type of lift by a modern electric lift, but would merely require him to replace it by a working lift comparable to that which was demised.

However, the logical and better view would seem that, although repair involves renewal of *subordinate* parts of the premises, this obligation does not apply to parts of the premises which are distinct in themselves. Thus in *Lister* v. *Lane* [1893] 2 Q.B. 212, the house which required underpinning and of which renewal was held unnecessary was part only of the demised premises. See also *Wright* v. *Lawson* (1903) 19 T.L.R. 203 and 510; Foa's *Landlord and Tenant* (7th ed.) 205. It would be going too far to say that *Wright* v. *Lawson*, *supra*, is authority for the principle adumbrated here, since the judgment of Kekewich J., which was affirmed on appeal, appears to proceed on the ground that the bay window was not liable to be replaced because replacement was possible, consistently with the requirements of the London County Council, only if a substantially improved bay window were erected. However, *some* support for the principle can be found in the reports of the proceedings before Kekewich J. and in the Court of Appeal. At all events the principle appears to be supported by reason and it is believed that it found favour

with Slade J. in *Kent* v. *Coniff* (*p*) although he is not reported on this point. If the principle is correct it would seem to be a question of fact whether a lift installation is a distinct part of the premises for this purpose. There would seem to be a reasonably strong case that it is. Assuming that renewal of the lift installation is not required, renewal of subordinate parts of the installation will be required from time to time provided that the substantial effect of such renewal is not to give back to the landlord a new lift.

If the tenant has no express covenant relating to the lift, it would seem that the extent of any implied obligation is not to commit or permit waste, if he is a tenant for years, and otherwise to use the lift in a tenant-like manner and to deliver it up at the end of the tenancy in the same condition as demised, fair wear and tear excepted. See Woodfall (27th ed.) at p. 778; *Warren* v. *Keen* [1954] 1 Q.B. 15.

(*p*) [1952] 2 T.L.R. 209; [1953] 1 Q.B. 361, C.A.

NOTES OF RECENT CASES

1. *REAL PROPERTY*

By F. R. Crane, ll.b., Solicitor

Penfold v. *Pearlberg* [1955] 1 W.L.R. 1068; [1955] 3 All E.R. 120 (Ch.D.)

Sale of land—action for specific performance—possession by third party—jurisdiction to order inspection.—The action here was for a specific performance of a contract of sale of leasehold premises, under requisition by the local authority, and described in the contract as "practically rebuilt under the War Damage Act." The defendant purchaser, doubting the truth of this statement, asked for an order of inspection under R.S.C., Ord. 50, r. 3. Roxburgh J. held that he had jurisdiction to make (and made) an order subject to the consent of the requisitioning authority, without their being joined as a party to the action. This would be necessary only in the unlikely event of their objecting to the inspection. The learned judge described his construction of the rule as "robust" but it will be welcome as both convenient and as limiting the cost of litigation.

Re Bettinson's Question [1955] 3 W.L.R. 510; [1955] 3 All E.R. 296 (Ch.D.)

Husband and wife—dispute as to possession—Married Women's Property Act, 1882, *s.* 17.—This decision, though concerned with personal property, is noted briefly as relevant to the interpretation of the Married Women's Property Act, 1882, s. 17. The parties were by reason of domicile subject to the law of California, whereby under the doctrine of community of property the husband has management and control of personal property. The wife drew sums of money from banks and brought them to England where she also obtained control of some chattels. Wynn-Parry J. held (i) though there was no dispute as to title (compare *Cobb* v. *Cobb* [1955] 1 W.L.R. 731; [1955] 2 All E.R. 696, noted *ante*, p. 389) the word "possession" in section 17 was wide enough to cover the present dispute about management and control and (ii) that an enquiry could be ordered to ascertain whether the sums of money were still represented by identifiable property (considering *Tunstall* v. *Tunstall* [1953] 1 W.L.R. 770; [1953] 2 All E.R. 311). An order for return of the chattels was also made.

2. *WILLS*

By A. Kiralfy, Barrister-at-Law

Re Andrews [1955] 1 W.L.R. 1105; [1955] 3 All E.R. 248

Family provision—moral obligation—dependant.—It is not sufficient to satisfy the definition of a "dependant" under section 1 of the Inheritance (Family Provision) Act, 1938; the applicant for maintenance out of the testator's estate must show that the testator was under some moral obligation to contribute towards his or her support. In the present case the testator, Edward Andrews, died in 1953. The plaintiff was one of his daughters and unmarried. She was, however, 69 years of age, and had formed a life-long union with a married man since the year 1911. Hence she did not have any real claim on her father's bounty as an "unmarried" person. There was some suggestion that she was unable for health reasons to support herself, but this was not established. An interesting point in this case was a quarrel with the testator which, rather than her way of life, led to his excluding her from his will. The applicant sought to show that the testator had been to blame for this breach, but Wynn-Parry J. held that the incident was irrelevant, since the primary claim of dependence was not established. Had a prima facie case of moral obligation been made out, it would seem that the rights and wrongs of the quarrel would have been relevant, just as the court will judge the validity of the reasons given by a testator for failing to provide for a dependant. This case is another example of the peculiar judicial interpretation given the word "single" or "unmarried" when used in statutes. In *R.* v. *Pilkington* (1853) 2 E. & B. 546 it *included* a married woman separated from her husband, under the "mischief" rule of interpretation, just as in this case it *excluded* a single woman who was in the general economic position of a wife.

(Theobald 94.)

---

3. *LANDLORD AND TENANT CASES*

By J. Muir Watt, M.A., of the Inner Temple, Barrister-at-Law

Morcom v. *Campbell-Johnson and Others* [1955] 3 W.L.R. 497; [1955] 3 All E.R. 264

Rent Restrictions Acts—permitted increase of rent—whether "improvement" or "repair"—test applicable. This is one of those cases concerned with the debatable territory between "repair" and "improvement," the question being whether the landlords could claim an increase of rent under section 2 (1) (a) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The landlords

of a large block of flats contended that the following three items constituted improvements:—(1) the replacement of a two-pipe drainage system, which had worn out, by a modern one-pipe system by which both water-closet refuse and water from hand basins and baths were conveyed by one set of pipes to the drains; (2) the substitution for worn-out separate tanks containing the cold-water supply for each flat of a single large tank at the top of the building; (3) the lowering of an area adjacent to the flats so that it was no longer above the level of the damp-proof course in the building (a defect in the original construction) and would not cause damp to rise up the walls. The Court of Appeal reversed the decision of the county court judge who had held that all these works were improvements. The Court of Appeal held that (1) and (2) were repairs and not improvements and that (3), although an improvement, was not an improvement of the flats or of any individual flat.

The difficulty in all these cases is that repairs often contain an element of improvement and improvements often contain an element of repair. Evershed M.R. said in *Wates* v. *Rowland* [1952] 2 Q.B. 12, at 23: "In the course of the argument examples were given showing that what was undoubtedly repair might yet involve some degree of improvement, in the sense of the modern substitute being better than that which had gone before. At the other end of the scale, it was also clear that work done to satisfy modern standards, although it might involve restoration, and might be said to be restoration in the *Rabbitt* v. *Grant* sense, yet clearly would be an improvement. Between the two extremes, it seems to me to be largely a matter of degree, which in the ordinary case the county court could decide as a matter of fact, applying a common-sense man-of-the-world view." That the distinction is difficult can be seen when the decision in the present case against the landlords in items (1) and (2) is compared with the decisions in favour of the landlords in such cases as *Free* v. *Callender's Trustees* 1927 S.L.T.(Sh.Ct.) 17 (replacement of a detached earth-closet by a built-on water closet) and *Strood Estates Co. Ltd.* v. *Gregory* [1936] 2 K.B. 605 (C.A.) (substitution of an efficient sanitary system for an antiquated system not meeting the requirements of the local authority). The Court of Appeal in the present case said that the test was whether there was the provision of something new for the benefit of the occupier, looked at from the objective point of view of a reasonable tenant. The third item raised a different point. It was an improvement, but not an improvement of the dwelling-houses. The court conceded that improvements executed off the site of a particular dwelling house might be qualifying improvements under section 2 (1) (a), and that the cost might be apportioned despite any express provision to that effect, but they did not consider that item (3) in the present case could be regarded as qualifying for this treatment.

(Megarry (8th ed.), pp. 333–335)

4. *REVENUE CASES*

By David R. Stanford, m.a., ll.b., Barrister-at-Law

(*Note*:—Where a case is not reported in any of the general series of law reports it is cited from the *Annotated Tax Cases* (A.T.C.) or *Taxation Reports* (T.R.) or *Taxation Newspaper* (Taxation).)

British Legion, Peterhead Branch, Remembrance and Welcome Home Fund v. *C. I. R.* (1953) 35 T.C. 509 (Ct. of Sess.)

Income Tax—Trading—Charitable donations

Statutory provision: Income Tax Act, 1918, Schedule D, Case I (now Income Tax Act, 1952, s. 123).

Point: An enterprise which is conducted gratuitously with the object of raising money for a worthy cause may nevertheless result in the carrying on of a trade or an adventure in the nature of trade. It is not the motive actuating the enterprise which is of importance but the manner in which it is carried on. If a trade, then the profits are taxable. It is to be noted, however, that where (as in this case) the profits are increased by donations, such donations do not thereby become subject to tax, and no such claim was put forward by the Revenue.

Facts and Decision: The appellant fund, which was a local committee of the British Legion, claimed exemption from tax on the profits made from a series of dances. These profits were applied for certain worthy objects (not, apparently, solely charitable). A lighted and heated hall was let at a nominal rent, management services such as M.C. and collection of admission money were given free and many persons gave money over and above the stated admission price. These dances were given weekly over a period of three years, and were advertised during the initial weeks.

Held: There was evidence to support the Commissioners' finding that the activities of the fund in running dances amounted to the carrying on of a trade. The court held that the gratuitous moneys and cheap let of the hall were relevant only to the amount of profit and not its nature. Lord Russell (at 35 T.C., p. 516) stated the test as to whether the activity amounted to a trade or merely an attractive method of obtaining subscriptions to be whether the dances "were of a commercial character or run on commercial lines." The Lord President, with whose judgment Lord Carmont concurred, evidently regarded the case as a borderline one for, whilst holding that there was evidence for the finding of trading activity, he expressed doubt that independently he would have reached the same conclusion.

Sharpey-Schafer v. *Venn* (1955) 34 A.T.C. 141 (Ch.D.)

Income Tax—Appeal by successful appellant

Statutory provisions: Income Tax Act, 1952, s. 64

Point: Where the taxpayer has been wholly unsuccessful before the Special Commissioners and there is no legitimate matter upon which he could appeal, the Special Commissioners should not state a case for the opinion of the High Court even if so requested by the taxpayer. If, as would appear to have been the reason for the present taxpayer's strange conduct, the appellant wishes to air some grievances about the alleged conduct of the Inspector of Taxes concerned, he should not attempt to follow up his allegations by way of case stated.

Sanderson v. *Durbidge* [1955] 1 W.L.R. 1087; *sub nom.* *Durbridge* v. *Sanderson* (*Inspector of Taxes*) [1955] 3 All E.R. 154 (Ch.D.); 34 A.T.C. 218; [1955] T.R. 221

Income Tax—Expenses—Schedule E

Statutory provisions: Income Tax Act, 1952, s. 156 and Schedule IX, paragraphs 1 and 7.

Point: The extremely stringent rule applicable to the allowance of expenses under Schedule E, being only such as are "wholly exclusively and necessarily" incurred, refers only to "expenses imposed upon each holder [of an office] *ex necessitate* of his office and to such expenses only." There is no difference in principle between the expense of lunch during a normal lunch hour and that of dinner during the period taken therefor when working overtime.

Facts and Decision: The respondent taxpayer, a local government officer, had succeeded before the General Commissioners in claiming as a deductible expense the excess of the cost to him of meals eaten in a restaurant when attending evening committee meetings over the cost normally incurred by him in respect of meals taken at similar times when "off-duty." Attendance at such evening meetings was a condition of his employment. He received no additional salary in respect thereof but received allowances of 2s. 6d. for tea or 6s. for dinner which allowances were included as emoluments by his employer, the Council, for tax purposes. Such allowances were only given after the expense was incurred on the submission of a certificate of expenditure. The Crown appealed.

Held: The appeal succeeded, no deduction being permissible. Wynn-Parry J. applied *Ricketts* v. *Colquhoun* [1926] A.C. 1 (disallowance of Recorder's travelling and hotel expenses). He expressed the view that the two cases in which extra living expenses (which the master requires the servant to incur in the particular place where the duty has to be done) have been allowed as deductions were exceptions to the general rule. These two cases were *Nolder* v. *Walters* (1930) 15 T.C. 380 (subsistence expenses of aeroplane pilot) and *Lomax* v. *Newton* [1953] 2 All E.R. 801 (hotel expenses of Territorial officer),

in each of which the court very hesitantly refused to upset the Commissioners' findings. For those puzzled by the stringency of the rule, it is some comfort to find that the judge expressly agreed with the comment of Vaisey J. on the words "wholly exclusively and necessarily" reported in [1953] 2 All E.R., at p. 802, *viz*: "They are, to my mind, deceptive words in the sense that, when examined, they are found to come to nearly nothing at all."

CORRESPONDENCE

To the Editor,
The Conveyancer & Property Lawyer.

Dear Sir,

Requisitioned Houses and Housing (Amendment) Act, 1955

I have been a subscriber to your publication for a number of years and I trust, therefore, that you will not regard the following remarks in this letter as any reflection upon the high standard of the work.

I am, however, rather concerned at the wrong impression likely to be conveyed by the remarks at the top of page 259 of the July–August issue (*ante*). The implication is that local authorities have neglected their duties with regard to maintenance of properties under requisition. In fact H. M. Government imposed severe restrictions upon expenditure on properties under requisition, which were accentuated as from October 1, 1953, when the limitation of repair and redecoration was reduced to £15 per family unit. At that time I made strong representations to the Ministry of Housing and Local Government that the figure would result in considerable deterioration to the properties, but was informed that the Government had seen fit to impose the limitation and any deterioration would have to be taken into account in dealing with the claim for compensation under section 2 (1) (b) of the Compensation (Defence) Act, 1939.

Yours faithfully,
N. C. Scragg,
Town Clerk.

Folkestone, September 27, 1955.

THE LIBRARY

Estate Duty on Settled Property and Annuities. By George C. Mason, b.a., of Lincoln's Inn, and of King's Inn Dublin, Barrister-at-Law. Jordan & Sons; Shaw & Sons. 240 pp. (30s. net.)

In its somewhat specialised field this book provides a reliable guide to the enactments and decisions since the Finance Act, 1894. If an excuse is needed for the appearance of yet another book in a field of the law already well served by the writers of textbooks, it is to be found in the clear manner in which the material is presented, with the enactments set out in heavy print, not as an index but where they should properly come in the exposition, and the decided cases shortly but lucidly digested in their turn. This is not a book that gives an exhaustive account of the law, nor does it serve the reader who looks solely for evasion devices: it does however present its subject in a manner suitable for quick and accurate reference. It will no doubt be of especial use to those, lawyers and others, who are often called upon to gauge the probable burden of duty on a reversion or contingent interest, and who seek a plain statement and practical answer.

Some criticism must be made of the last two chapters of the book. The last chapter is headed "Settlements," somewhat surprisingly in a book where one might reasonably have expected the first chapter to have that heading; in fact, the chapter deals mainly with foreign settlements. The chapter before it is equally mis-named: it is called "Special Classes of Property," but deals with realty and joint ownership; and it is not easy to see what is so special about these topics, particularly in a book which itself sets out to be specialist. The author appears to have put into this chapter a few points that could have been worked in elsewhere more happily. One result of his so doing is a certain occasional looseness of phrase, such as in the statement that "The most common form of trust concerning joint property is a resulting trust," a statement that is clearly too sweeping and probably untrue, and is only illuminated by references to *Dyer* v. *Dyer* and *Marshall* v. *Crutwell* that fail to point out where the true distinction lies. It may be objected that such criticism is too exacting, in view of the modest intentions of the book. This may be true: but the subject-matter is difficult, and looseness of phrase can be very misleading.

D. C. P.

The Concise Law of Housing. By W. A. West, ll.b. Estates Gazette Ltd. (32s. 6d.)

This summary of the provisions of the Housing Acts will be of interest to students of housing law, but it is not full enough for practitioners, even in private practice, and certainly not for those in local government, and yet it is much more than an "introduction." It seems to be substantially accurate, but it does not add anything to what is in the standard textbooks on the subject. The indices are scarcely adequate—for example, in the Table of Statutes there are twenty-four references to the Housing Repairs and

Rents Act, 1954, without specifying the sections, and in the "general index" there are over a dozen references to such items as "county councils," "inquiry, local," and "Rent, etc., Acts."

J. F. G.

Adkin's Landlord & Tenant. Fourteenth Edition. By Raymond Walton, Barrister-at-Law. London: The Estates Gazette, Ltd. 1955. xxxi, 757 and (index) 21 pp. (£2 7s. 6d.)

Adkin's *Landlord & Tenant* is written for students for the examinations of the Royal Institution of Chartered Surveyors and kindred bodies and, though we suspect they will find it hard going, it is a good book. The main text consists of 352 pages, followed by two long appendices. The first of these contains the text of all the principal statutes with which a practitioner is likely to be concerned arranged in an intelligent order. Thus, the Acts dealing with security of tenure of dwelling-houses are put together—incidentally, the Furnished Houses (Rent Control) Act, 1946, seems to be out of order—those dealing with agricultural holdings are in another group and so on. The second appendix consists of a number of precedents. Having regard to the rules restricting the drafting of documents under seal to lawyers, there are no precedents of leases, but there are a number of standard forms of tenancy agreement which are published by the Estates Gazette Ltd. Most of the tenant's obligations are expressed rather tersely, and the standard clause to keep the premises in the same condition as they are in at the commencement of the term is unsatisfactory unless there is a schedule of condition, though it is difficult to suggest what is an appropriate obligation for a very short term.

The main text is well written and well arranged but, no doubt necessarily, is extremely compressed. There is a generous citation of authorities, but it seems to us that in a number of cases more modern authorities could have been given. It would not be fair to draw the inference that the text has not been brought up-to-date; on the contrary, the author has clearly in mind that, apart from the general law of landlord and tenant, nearly all lettings fall in one of three classes—dwelling-houses, business premises and agricultural holdings; but we think the first three chapters (landlords, tenants and leases) might be reconsidered. There are occasional errors, as where it is stated as a general rule that each side pays his own costs on the grant of a lease, but the errors are remarkably few. In short, it is a sound student's book and one which could be of assistance to law students and managing clerks.

E. F. G.

Matrimonial Property Law. Editor: W. Friedmann, Professor of Law, University of Toronto. London: Stevens & Sons, Ltd. 1955. 472 pp. (£3 3s.)

This is the second volume in the University of Toronto School of Law comparative law series. There are six papers on community of property systems and two on intermediate systems. No doubt it is very irreverent to say so, but it seems to us that one paper on each of the three systems would have been sufficient. Feminism in England, having obtained equality between the sexes, has with proper illogicality gone forward to obtain special rights

for the wife particularly with regard to the matrimonial home. It is interesting to note that the "backward" countries like South Africa with their community of property give more satisfactory protection to the wife on divorce or death, for at the least the wife gets a half of all property belonging to the spouses. Repeated attempts in South Africa to abolish community of property have ended in failure, largely through the opposition of women's associations. Most countries today seem to be dissatisfied with their existing systems and, unless someone can think of something entirely new, this dissatisfaction will continue, for all systems meet with complaints. In England, the lottery aspect of marriage has been extended to the matrimonial home and joint banking accounts: it is easy enough for the husband to contract to sell the matrimonial home, but whether he can deliver vacant possession is quite another matter. There is little doubt that matrimonial property law requires proper attention from the legislature but, in default of such attention, it seems probable that the current method of legislating by the courts will continue. Apart from the American and Canadian homestead laws there seems little in the systems described that could usefully be considered in this country. One thought that occurs to us is that, although numerous parties to divorce proceedings here were married in community of property, no one seems to bother about dissolving the community and, with typical insularity, the judges, counsel and solicitors ignore the question.

E. F. G.

PUBLISHERS' NOTICE

It is regretted that, owing to the continued rise in the cost of printing, paper and overhead expenses, it has become necessary to increase the subscription rate of this journal for 1956 to 38s. 6d.

PRECEDENTS

Form 1

Transfer of a Freehold Flat in a Block (*a*) (*b*).

(*Drafted by Edward F. George*, LL.B., *Solicitor*)

H. M. LAND REGISTRY

LAND REGISTRATION ACTS, 1925 and 1936

County: ——

Title No.: ——

Property: ——

Date: ——

THIS TRANSFER is made BETWEEN A. B. Flats Limited whose registered office is situate etc. (hereinafter called "the Vendors") of the one part and C. D. of etc. (hereinafter called "the Purchaser") of the other part Parties.

WHEREAS:—

(1) The Vendors are registered at H. M. Land Registry as proprietors with absolute title of the freehold property consisting of —— flats known as numbers —— in the County of —— garages and the gardens and grounds thereof (all which premises are hereinafter referred to as "the Mansion") Recitals: of seisin;

(2) The Vendors have previously sold or granted leases of or intend hereafter to sell or grant leases of the flats in the Mansion other than the premises hereby transferred and the Vendors have in every transfer and lease imposed and intend in every future transfer and lease to impose the restrictions set of flat scheme;

(*a*) An article by Mr. George on the sale of flats will be found on p. 3.

(*b*) The transfer envisages a block of flats and garages with a common garden. The colours on the plan are as follows:—flat–red; garage–blue; forecourt–hatched red; garden–brown; drive-way–hatched brown; area for hanging out clothes–yellow; space for dustbins–green.

forth in the First Schedule hereto to the intent that any owner or lessee for the time being of any part of the Mansion or any flat therein may be able to enforce the observance of the said restrictions by the owners or occupiers for the time being of the other flats

of agreement for sale.

(3) The Vendors have agreed with the Purchaser for the sale to the Purchaser of the property hereinafter described for the consideration and on the terms hereinafter appearing

NOW THIS DEED WITNESSETH as follows:—

Testatum.

Consideration.

Parcels.

1. IN pursuance of the said agreement and in consideration (*c*) of the sum of —— paid by the Purchaser to the Vendors (the receipt whereof the Vendors hereby acknowledge) and of the rentcharge hereinafter reserved and of the covenants by the Purchaser hereinafter contained the Vendors AS BENEFICIAL OWNERS hereby transfer unto the Purchaser (*d*) [ALL THOSE pieces or parcels of land shown on the plan annexed hereto and thereon coloured red and blue being parts] [ALL THAT piece or parcel of land shown on the plan annexed hereto and thereon coloured red being part] of the land comprised in the title above referred to TOGETHER WITH the Flat (hereinafter called "the Flat") numbered —— and being on the ground floor of the Mansion (including one half part in depth of the joists between the ceilings of the Flat and floors of the flat above it and the internal and external walls of the Flat up to the same level) [erected on the said piece or parcel of land] [and the Garage (hereinafter called "the Garage") erected on the said pieces or parcels of land respectively] [ALL THAT the Flat (hereinafter called "the Flat") numbered —— and being on the first floor of the Mansion (including one half part in depth of the joists between the floors of the Flat and the ceilings of the Flat below it and of the joists between the ceilings of the Flat and the floors of the Flat above it and the internal and external walls between such levels)] [ALL THAT the Flat (hereinafter called "the Flat") numbered —— and being on the top floor

(*c*) The stamp duty is ad valorem calculated on the capital sum plus twenty times the rentcharge.

(*d*) Alternatives are given for ground, intermediate and top floors, all with or without garages.

of the Mansion (including one half part in depth of the joists between the floors of the Flat and the ceilings of the Flat below it the internal and external walls above the same level and the roof of the said building so far as the same constitutes the roof of the Flat)] [and the Garage (including the land on which it is built) (hereinafter called "the Garage")] [the situation whereof is shown on the plan annexed hereto and thereon coloured red] [the situations whereof are shown on the plan annexed hereto and thereon respectively coloured red and blue] TOGETHER WITH the fuel bunker numbered —— on the said plan TOGETHER ALSO with the easements rights and privileges mentioned in the Second Schedule hereto subject as therein mentioned EXCEPT AND RESERVING as mentioned in the Third Schedule hereto and RESERVING ALSO out of the premises hereby conveyed to the Vendors in fee simple a perpetual yearly rentcharge of —— to be for ever charged upon and issuing out of the premises hereby transferred and to be paid without any deduction (income tax thereon only excepted) by equal half-yearly payments on the 24th day of June and the 25th day of December in every year the first payment thereof calculated from the date hereof to be made on the —— day of —— next.

Reservation of rentcharge.

2. THE Purchaser so as to bind the owner for the time being of the Flat and so that this covenant shall be for the benefit and protection of the Mansion and the other flats therein and every part thereof HEREBY COVENANTS with the Vendors and with the owners of the other flats comprised in the Mansion that the Purchaser and the persons deriving title under him will at all times hereafter observe the restrictions set forth in the First Schedule hereto.

Covenant to observe restrictions.

3. THE Purchaser HEREBY COVENANTS with the Vendors that the Purchaser will at all times hereafter pay the said yearly rentcharge at the times hereinbefore appointed for the payment thereof.

Covenant to pay rentcharge.

4. (a) THE Purchaser HEREBY COVENANTS with the Vendors and with the owners of the other flats comprised in the Mansion that the Purchaser will at all times hereafter:—

Purchasers covenants:

(i) Keep the Flat (other than the parts thereof comprised

To keep interior and garage in repair.

and referred to in paragraphs (ii) and (v) of clause 5 hereof) and all walls party walls sewers drains pipes cables wires and appurtenances thereto belonging [and the garage] in good and tenantable repair and condition and in particular (but without prejudice to the generality of the foregoing) so as to support shelter and protect the parts of the Mansion other than the Flat

To contribute towards maintenance of common parts.

(ii) Contribute and pay one equal —— part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto

To pay proportionate share of water rate if not separately assessed.

(iii) So long as the Flat [and/or the Garage] shall not be separately assessed (*e*) for water rate pay a due proportion of the water rate assessed on the Mansion (excluding any flat or garage in the Mansion for the time being separately assessed) such proportion to be determined by the Vendors on the basis of each flat in the Mansion being of equal value and each garage in the Mansion being of equal value

To insure.

(iv) Insure and keep insured the Flat [and Garage] against loss or damage by fire (*f*) in the full value thereof in the names of the Purchaser and the Vendors through the agency of the Vendors (*g*) with the —— Company or such other insurance office as the Vendors shall determine and whenever required produce to the Vendors the policy or policies of such insurance and the receipt for the last premium for the same and in the event of the Flat being damaged or destroyed by fire as soon as reasonably practicable lay out the insurance moneys in the repair rebuilding or reinstatement of the Flat

To rebuild.

To permit the Vendors to view and make good defects.

(v) Permit the Vendors and their surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Flat or any part thereof to view and examine the state and condition thereof and make good all defects decays and wants of repair of which notice in writing shall be given by the Vendors to the Purchaser and for which

(*e*) There is often an appreciable saving in taking one supply for the whole mansion. A separate cock accessible from outside the flat is installed and the supply cut off under cl. 4 (c) in the event of non-payment.

(*f*) It may be desirable to insist on comprehensive cover.

(*g*) The Vendors are thus certain of knowing whether the premises are kept insured.

the Purchaser may be liable hereunder within three months after the giving of such notice

(vi) Permit the Vendors and their surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Flat or any part thereof for the purpose of repairing any part of the Mansion and for the purpose of making repairing maintaining rebuilding cleansing lighting and keeping in order and good condition all sewers drains pipes cables watercourses gutters wires party structures or other conveniences belonging to or serving or used for the Mansion and also for the purpose of laying down maintaining repairing and testing drainage gas and water pipes and electric wires and cables and for similar purposes and also for the purpose of cutting off the supply of water to the Flat or any other flat in the Mansion in respect whereof the Purchaser or the occupier of such other flat as the case may be shall have made default in paying his share of the water rate

To permit the Vendors to enter to repair main structure.

(b) Provided Always that if at any time before the expiration of twenty-one years after the death of the last survivor of the descendants now living of His late Majesty King George the Fifth the Purchaser shall fail to observe perform or fulfil the covenants on his part contained in paragraph (a) of this clause or any of them in any such case and as often as the same shall happen it shall be lawful for the Vendors but without prejudice to any other remedy right or power available to the Vendors in respect of such default and notwithstanding any actual or constructive waiver of any previous cause or right of entry or re-entry (*h*) or of any other right or claim on the part of the Vendors to enter upon the Flat or any part thereof in the name of the whole and thereafter at the option of the Vendors either (i) thenceforth to hold possess and enjoy the Flat in fee simple free from incumbrances but except and reserving and subject as hereinbefore mentioned or (ii) to execute and do such works acts and things (if any) on the Flat as shall be necessary or proper for repairing rebuilding or insuring the same in

Right of re-entry for breach of covenant.

(*h*) *Quaere*, whether the right of re-entry is subject to the rule against perpetuities: see 14 *Conveyancer*, p. 356.

accordance with the covenants on the part of the Purchaser hereinbefore contained and to remain in the possession or receipt of the rents and profits thereof until thereby or otherwise all sums of money expended by the Vendors in or about such works acts and things as aforesaid or in insuring the Flat and all sums of money due to be contributed and paid by the Purchaser under sub-paragraph (ii) of paragraph (a) of this clause together with all costs and expenses occasioned by the exercise of this power be fully paid and satisfied

Right to cut off water for default in payment therefor.

(c) Provided further that if at any time before the expiration of the said period of twenty-one years the Purchaser shall fail to pay his proportion of water rate pursuant to sub-paragraph (iii) of paragraph (a) of this clause the Vendors shall be entitled to cut off the supply of water to the Flat [and/or the Garage]

Vendors' covenants:

5. THE Vendors HEREBY COVENANT with the Purchaser as follows:—

To impose similar restrictions on other flat-owners.

(i) That the Vendors will require every person to whom they shall hereafter transfer or grant a lease of any flat comprised in the Mansion to covenant to observe the restrictions set forth in the First Schedule hereto

To maintain structure.

(ii) That (subject to contribution and payment as hereinbefore provided) the Vendors will maintain repair redecorate and renew (a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the Mansion (b) the gas and water pipes drains and electric cables and wires in under and upon the Mansion and enjoyed or used by the Purchaser in common with the owners and lessees of the other flats (c) the main entrances passages landings and staircases of the Mansion so enjoyed or used by the Purchaser in common as aforesaid and the boundary walls and fences of the Mansion

To look after the common parts.

(iii) That (subject as aforesaid) the Vendors will so far as practicable keep clean and reasonably lighted (*i*) the passages landings staircases and other parts of the Mansion so enjoyed or used by the Purchaser in common as aforesaid and as far as

(*i*) Lighting of the passages is often best dealt with by incorporating one passage light in the lighting system of each flat so that all flat-owners bear approximately their fair share. The switches used will be of a type that automatically switch off the light after a few seconds.

practicable keep the forecourt garden way and other parts of the Mansion shown on the plan annexed hereto and thereon hatched red coloured brown hatched brown coloured yellow and coloured green (*k*) in good condition and (as to the garden) cultivation

(iv) That the Vendors will pay the water rate assessed on the Mansion (but not on the Flat [and/or the Garage] if separately assessed) — To pay water rate.

(v) That (subject as aforesaid) the Vendors will so often as reasonably required decorate the exterior of the Mansion in such manner as shall be agreed by a majority of the owners or lessees of the flats comprised in the Mansion or failing agreement in the manner in which the same was previously decorated or as near thereto as circumstances permit and in particular will paint the exterior parts of the Mansion usually painted with two coats at least of good paint at least once every three years — To decorate the exterior.

(vi) Provided that the word "Mansion" in this clause (except in paragraph (iv)) shall exclude the garages.

6. (a) THE Vendors HEREBY DECLARE that they hold the following as trustees (*l*) for the Purchaser and the Vendors and their successors in title as owners of the other flats and garages comprised in the Mansion and his and their lessees as well as for the Vendors and their successors in title as owners of the rentcharge hereby reserved and other rentcharges on the sale of other flats comprised in the Mansion that is to say:— — Declaration of trust of common parts and of benefit of covenants.

(i) the fee simple in the forecourt garden way and other parts of the Mansion shown on the plan annexed hereto and thereon hatched red coloured brown hatched brown coloured yellow and coloured green subject to all rights and privileges thereover granted by this transfer and other transfers and leases of the flats comprised in the Mansion granted or to be granted

(ii) the benefit of the covenants similar to those contained in clause 4 hereof entered into or to be entered into by the

(*k*) See explanation of the colouring in footnote (*b*), *supra*.

(*l*) If it for any reason became necessary, a flat-owner could apply for the appointment of a new trustee to enable the machinery to function, but paragraph (b) ensures that a transferee-trustee is not a man of straw, for, at the very least, he will own the rentcharges.

transferees or lessees of the other flats comprised in the Mansion and the benefit of the rights of entry and re-entry similar to those contained in clause 4 hereof reserved or to be reserved in the transfers or leases to the transferees or lessees of the other flats comprised in the Mansion

(b) The Vendors shall remain liable on the covenants on their part contained in this transfer so long as they shall remain owners of the rentcharge hereby reserved but on transferring the said rentcharge and appointing the transferee thereof to be trustee in their stead the Vendors shall cease to be personally liable on the said covenants

Definitions.

7. It is hereby declared as follows:—

(i) That every internal wall separating the Flat from an adjoining flat shall be a party wall severed medially

(ii) That the expressions "Vendors" and "Purchaser" where the context so admits includes their and his successors in title and that where the Purchaser consists of two or more persons all covenants by and with the Purchaser shall be deemed to be by and with such persons jointly and severally.

Certificate of value.

8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £3,000.

In witness, *etc.*

The First Schedule above referred to

Restrictions imposed in respect of the Flat

1. Not to use the Flat nor permit the same to be used for any purpose whatsoever other than as a private dwelling-house in the occupation of one family only nor for any purpose from which a nuisance can arise to the owners lessees and occupiers of the other flats comprised in the Mansion or in the neighbourhood nor for any illegal or immoral purpose.

2. Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on any flat

in or part of the Mansion or may cause an increased premium to be payable in respect thereof.

3. Not to throw dirt rubbish rags or other refuse or permit the same to be thrown into the sinks baths lavatories cisterns or waste or soil pipes in the Flat.

4. No piano pianola gramophone wireless loudspeaker or mechanical or other musical instrument of any kind shall be played or used nor shall any singing be practised in the Flat so as to cause annoyance to the owners lessees and occupiers of the other flats comprised in the Mansion or so as to be audible outside the Flat between the hours of 11 p.m. and 9 a.m.

5. No name writing drawing signboard plate or placard of any kind shall be put on or in any window on the exterior of the Flat or so as to be visible from outside the Flat; (save as otherwise provided in the Transfer) no clothes or other articles shall be hung or exposed outside the Flat; no flower box flower pot or other like object shall be placed outside the Flat; no mat shall be shaken out of the windows of the Flat; and no bird dog or other animal which may cause annoyance to any owner lessee or occupier of the other flats comprised in the Mansion shall be kept in the Flat.

6. The exterior of the Flat shall not be decorated otherwise than in a manner agreed to by a majority of the owners or lessees of the flats comprised in the Mansion or (failing such agreement) in the manner (as near as may be) in which the same was previously decorated.

THE SECOND SCHEDULE ABOVE REFERRED TO

Easements rights and privileges included in the Transfer

1. Full right and liberty for the Purchaser and all persons authorised by him (in common with all other persons entitled to the like right) at all times by day or by night and for all purposes to go pass and repass over and along the forecourt shown on the plan annexed hereto and thereon hatched red and through and along the main entrances of the Mansion and the passages landings and staircases leading to the Flat.

2. Full right and liberty for the Purchaser and all persons authorised by him (in common with all other persons entitled to the like right) with or without motor-cars and other vehicles at all times by day or by night and for all purposes to go pass and repass over and along the way shown on the plan annexed hereto and thereon hatched brown.

3. Full right and liberty for the Purchaser and all persons authorised by him (in common with all other persons entitled to the like right) to use the forecourt and garden shown on the plan annexed hereto and thereon hatched red and coloured brown respectively for the purpose of recreation only (but not for the purpose of playing games or for any other purpose).

4. The right (in common with all other persons entitled to the like right) to use the part of the premises coloured yellow on the said plan for the purpose of drying clothes.

5. The right (in common with all other persons entitled to the like right) to use the part of the premises coloured green on the said plan for keeping a dustbin.

6. The right to subjacent and lateral support and to shelter and protection from the other parts of the Mansion and from the site and roof thereof.

7. The free and uninterrupted passage and running of water and soil gas and electricity from and to the Flat through the sewers drains and watercourses cables pipes and wires which now are or may at any time hereafter be in under or passing through the Mansion or any part thereof.

8. The right for the Purchaser with servants workmen and others at all reasonable times on notice (except in the case of emergency) to enter into and upon other parts of the Mansion for the purpose of repairing cleansing maintaining or renewing any such sewers drains and watercourses cables pipes and wires as aforesaid and of laying down any new sewers drains and watercourses cables pipes and wires causing as little disturbance as possible and making good any damage caused.

9. The right for the Purchaser with servants workmen and others at all reasonable times on notice (except in the case of emergency) to enter into and upon other parts of the Mansion for the purpose of repairing maintaining renewing altering or

rebuilding the Flat or any part of the Mansion giving subjacent or lateral support shelter or protection to the Flat.

10. The benefit of the restrictions contained in the transfers and leases of the other flats comprised in the Mansion granted or to be granted.

11. All the above easements rights and privileges are subject to and conditional upon the Purchaser's contributing and paying as provided in clause 4 (a) (ii) and the Fourth Schedule of and to this Transfer.

THE THIRD SCHEDULE ABOVE REFERRED TO

Exceptions and Reservations

There is excepted and reserved in fee simple out of this transfer to the Vendors and the owners and lessees of the other flats comprised in the Mansion:—

1. Easements rights and privileges over along and through the Flat equivalent to those set forth in paragraphs 1, 6, 7, 8 and 9 of the Second Schedule to this Transfer.

2. Power for the Vendors and their surveyors or agents with or without workmen and others at all reasonable times on notice (except in case of emergency) to enter the Flat for the purpose of carrying out their obligations under clause 5 of this Transfer.

THE FOURTH SCHEDULE ABOVE REFERRED TO

Costs Expenses Outgoings and Matters in Respect of which the Purchaser is to Contribute

1. The expenses of maintaining repairing redecorating and renewing (a) the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the Mansion (b) the gas and water pipes drains and electric cables and wires in under or upon the Mansion and enjoyed or used by the Purchaser in common with the owners and lessees of the other flats (c) the main entrances passages landings and staircases of the Mansion

so enjoyed or used by the Purchaser in common as aforesaid and (d) the boundary walls and fences of the Mansion.

2. The cost of cleaning and lighting the passages landings staircases and other parts of the Mansion so enjoyed or used by the Purchaser in common as aforesaid and of keeping the forecourt garden way and other parts of the Mansion shown on the plan annexed hereto and thereon hatched red coloured brown hatched brown coloured yellow and coloured green in good condition and (as to the garden) cultivation.

3. The cost of decorating the exterior of the Mansion.

4. All rates taxes and outgoings (if any) payable in respect of the forecourt garden way and other parts of the Mansion shown on the plan annexed hereto and thereon hatched red coloured brown coloured yellow and coloured green.

5. In this Schedule the word "Mansion" shall exclude the garages.

Form 2

Preliminary Inquiries or Requisitions under the Town and Country Planning Acts, 1947, 1953 and 1954.

(*Drafted by E. H. Bodkin, of Lincoln's Inn*)

I—GENERAL

1. (1) Was the property used as —— (a) on July 1, 1948; or (b) has such use been commenced since that date?

(2) If (a) was planning permission obtained under an Interim Development Order or operative Town Planning Scheme, or was the use in accordance with such scheme? If (b), was permission obtained under the Town and Country Planning Act, 1947? (*a*)

(*a*) Permission for continuance of use for which the property was used on July 1, 1948 (the Appointed Day under the Town and Country Planning Act, 1947) (provided it was not in contravention of previous planning control) or for the resumption of the last or normal use (provided as above) is not required unless the land has been unoccupied since January 7, 1937: Town and Country Planning Act, 1947, ss. 12 (5), 75 (9).

2. Have all necessary planning permissions for, and other consents, licences and approvals of, the buildings on the property and any alterations thereto been obtained? The building licences should be handed over on completion (*b*).

3. (1) Has the Vendor or his agent notice or knowledge of any contravention of planning control or of the service of any enforcement notice? (*c*)

(2) Is there any liability for development charge for development prior to November 18, 1952?

4. Is the property zoned in the development plan for [residential] purposes?

5. Have any building-preservation or tree-preservation orders been made which affect the property? (*d*)

6. Has the Vendor or his agent notice of any order, direction, agreement or restriction, or any proposal for compulsory purchase, affecting the property? (*e*)

[7. Was the [advertisement board] [illuminated sign] erected before or after July 1, 1948? If before, has the Vendor

---

(*b*) Permission was generally required for development under the interim development order (if any) or the Town and Country Planning (Interim Development) Act, 1943 (unless it was in accordance with an operative Town Planning Scheme), or under the Town and Country Planning Act, 1947, if since that Act. It is not generally necessary to inquire as to development charge. This is abolished as regards development carried out or begun since November 18, 1952. Development before then could not have been begun, until application to determine the charge had been made and the charge paid or secured, or consent to proceed given. This also applies to the retention of buildings or continuance of use for which permission has been given for a limited period. But development might have been begun without such application. Contravention of building by-laws is the subject of one of the common form inquiries of local authorities.

(*c*) Inquiry of the local authority as to authorisation for services of such notices is usually made.

(*d*) See Town and Country Planning Act, 1947, ss. 28, 29. Buildings may be also included in the list kept under section 30, but the local authority inquiries cover this. Orders are registrable as local land charges.

(*e*) The usual local authority inquiries, the local land charges register, and the register of planning permissions will cover most of the above inquiries, and also generally furnish any necessary further information, *e.g.*, as to proposed alteration in the development plan, orders for discontinuance of use or revocation of permission, construction of roads, orders or consents as to advertisements, etc.

been required to apply for permission to retain it by the planning authority? If after, was permission to erect it obtained?] (*f*)

[8. Has any application for variation of the covenants in the lease of the minerals been made under section 55 of the Town and Country Planning Act, 1954?]

[9. The land is sold as building land with the benefit of permission dated —— 1944 for the layout and erection of —— houses.

It must be shown that the permission was granted under an interim development order and that permission was also granted under the Restriction of Ribbon Development Act, 1935.] (*g*)

10. Please supply the name and address of the local planning authority.

II—UNDEVELOPED LAND (*h*)

1 (1) What is the amount of the established claim for depreciation of development value in respect of the property and is it vested in the Vendor?

(2) Has it been pledged to the Central Land Board to secure development charge?

(3) Has the Vendor obtained a certificate from the Central Land Board as to the amount of the original unexpended balance

---

(*f*) Town and Country Planning (Control of Advertisements) Regulations, 1948, Arts. 7, 8.

(*g*) If the permission was granted prior to the above date, or if permission (if required) was not also obtained under the Restriction of Ribbon Development Act, 1935, fresh permission would be required: Town and Country Planning Act, 1947, s. 77. If any of the buildings were begun on July 1, 1948, no permission to complete them would be necessary, provided their completion would have been in conformity with a Town Planning Scheme, or permission was granted under a scheme or by or under an interim development order, and also (if necessary) under the Restriction of Ribbon Development Act, 1935; Town and Country Planning Act, 1947, s. 78.

(*h*) These inquiries are directed to ascertaining the unexpended balance available to answer claims for compensation for possible future refusal of permission for development or conditions attached thereto. They are not necessary in regard to fully developed land. Compensation is not payable for refusal of permission for change of use; and compensation for revocation of permission already granted does not depend on the amount (if any) of the unexpended value.

of established development value? If so, the certificate must be produced and handed over on completion. If not, the Vendor must apply for a certificate on behalf of the purchaser and pay the costs of such application including any necessary apportionment (*i*).

2 (1) Is the unexpended balance reducible by reason of any claim for compensation for refusal of permission for development, or conditions attached to a permission, or of any order revoking or modifying planning permission, or payment in respect of war damage under section 59 of the Town and Country Planning Act, 1947, or by any development not attracting development charge carried out since July 1, 1948? (*j*)

(2) If any such compensation will be repayable on the purchaser carrying out any development, the Vendor must indemnify him against the amount.

(*i*) As to the effect of such a certificate, see note (*j*) *infra*. Apportionment of the claim will be made by the Central Land Board on application for payment of the claim: ss. 13, 15; or on the issue of a certificate under s. 48. But apportionments already made by the Board on approval of an assignment under the Town and Country Planning Act, 1953, will not usually be disturbed. Compensation in respect of planning decisions under the Act will, if necessary, be apportioned by the Minister and the apportionment will appear in the notice, which requires to be registered as a land charge: s. 28. If no apportionment is made the compensation is deemed to be distributed rateably over the area of the land.

(*j*) All the above (except s. 59 payments) may reduce the unexpended balance available for future compensation: see Parts II, IV and V of the Town and Country Planning Act, 1954. (As regards Part IV this is only so where the Minister has made a contribution, of which notice will be given to the owner.) Search in the register of local land charges will reveal refusals, conditional permissions and revocation orders; and also most development since July 1, 1948. Until the new register of land charges in respect of such payments is complete, inquiry of the Vendor will be necessary. A certificate may be obtained from the Central Land Board stating whether the land has an original unexpended balance of development value. But this will be subject to outstanding claims for payment of an established claim under Part I and liability to reduction by payment of compensation, unless the Board thinks fit to give additional information as to deductions; further if apportionment is necessary, there may be considerable delay in giving the certificate while the claims of other persons interested are disposed of. If no claim is made within the prescribed time, the Board may assess the amount and deduct it from the unexpended balance: ss. 14 (3), 15 (4) (c).

(3) Has any certificate of the Minister in regard to any development, that any such compensation will not be repayable on carrying it out, been made or applied for? (*k*)

3 (1) It is assumed that the property is sold on the footing that the purchaser will have the benefit of the full unexpended balance of development value (*l*).

(2) If the Vendor has, or may have, any claim to payment of the whole or any part of the established claim, he must hold it on trust for the purchaser (*m*).

(*k*) The compensation referred to in Requisition 2 will have to be repaid by the purchaser if he carries out development of certain classes: s. 29; unless the Minister gives a certificate under s. 29 (2) that no repayment will be required.

(*l*) The claim may be payable to the Vendor holding the claim if development charge has been paid by him or his predecessors in title, by reason of the grant, etc., of a tenancy for a consideration not reflecting the development value, damage by severance of adjoining land, damage by requisitioning and other events: Case A and Cases analogous to Case B: (ss. 5, 10). If the land is sold with the benefit of existing planning permission application should be made to the Council of the County Borough and County District to ascertain whether they propose within the next five years to acquire the land, or whether they have notice of the intention of any other public body to do so. This is to ensure that the purchaser will get compensation for existing planning permission should the land be so acquired. He must sign a binding contract, or complete the purchase within three months of the reply and give notice to the Council that he has done so: s. 33.

(*m*) The claim cannot be assigned to the purchaser: s. 60.

Form 3

Conveyance of Freeholds to the Trustees of an unincorporated Society on Trust for Sale (*a*).

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Vendor) of the one part and B of etc. C of etc. and D of etc. (hereinafter called the Purchasers) of the other part. Parties.

WHEREAS the Vendor is the estate owner in respect of the fee simple of the property hereinafter described in possession free from incumbrances and has agreed with the Purchasers for the sale to them for the sum of £X of the said property for a like estate in possession. Recital of agreement for sale and seisin.

(*a*) This is probably the best form to adopt in all cases where it is possible. A subsequent purchaser will not then be concerned with the Rules and whether any requisite resolution has been passed authorising the dealing; nor will he be concerned with whether the trustees had power to acquire the property.

If the trusts are brought on the title (as in the Precedent) the Rules will be brought on the title and a purchaser will be concerned to see that any requisite resolution has been passed. If the Rules clearly authorise the Committee to direct how the property is to be dealt with and provide for evidence of a resolution in favour of a purchaser, this is not a serious matter; but many Rules are deplorably vague in regard to the acquisition and disposal of property and the powers of the trustees. If the property is conveyed to the trustees simply as joint tenants without declaring any trusts, difficulties may arise in the future as to estate duty on the death of a trustee, when new trustees are appointed, or in regard to the covenants for title to be given, which may involve disclosing the trusts.

When the Rules provide for more than four trustees, the conveyance cannot be made to them on trust for sale, as under s. 34 (2) of the Trustee Act, 1925, there cannot be more than four trustees for sale. If the property were conveyed to more than four persons without declaring any trusts, it would appear to a purchaser to become vested in the first four named on trust for sale under s. 36 of the Law of Property Act, 1925. This would be inconvenient and probably inconsistent with the Rules, as in favour of a purchaser the first four could make a title without the consent of the others. If the trustees were given the powers of trustees for sale without making them such trustees, the restriction on the number would not apply; but it seems doubtful whether a provision that a purchaser was not to be concerned with the trusts in an instrument to which all persons interested were not parties would bind him unless the Rules so provided.

NOW THIS DEED WITNESSETH as follows:—

Conveyance. 1. IN pursuance of the said agreement and in consideration of the sum of £X on or before the execution hereof paid by the Purchasers to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby conveys unto the Purchasers

Parcels. ALL THAT etc.

Habendum. TO HOLD unto the Purchasers in fee simple.

Trust for sale. 2. The Purchasers shall stand possessed of the property hereby assured UPON TRUST to sell the same or any part thereof with power to postpone such sale and to stand possessed of the net proceeds of sale (after payment of costs) and of the net rents and profits until sale (after payment of outgoings) upon the trusts declared concerning the same by a Declaration of Trust already prepared and intended to bear even date herewith and made by the Purchasers.

Power to mortgage. 3. Pending the sale of the whole of the property hereby assured pursuant to the trust for sale hereinbefore declared the Purchasers or other the Trustees for sale hereof for the time being shall during the joint lives of the Purchasers and the life of the survivor of them and for the period of twenty-one years from the death of such survivor have the same full and unrestricted power of mortgaging or charging the same or any part thereof for any purpose and in any manner in all respects as a sole absolute owner (*b*).

Power to appoint new trustees. 4. The statutory power to appoint trustees shall apply to this Conveyance.

[5. Acknowledgment and undertaking as to documents.]

[6. Statement of value.]

IN WITNESS etc.

(*b*) A purchaser must assume the validity of this and the next clause without inquiry as to the Rules. It is assumed that the Rules provide for a power for the trustees to mortgage.

Form 4

Declaration of Trust by the Purchasers to accompany last Precedent.

THIS DECLARATION OF TRUST is made the —— day of —— 19— By B of etc. C of etc. and D of etc. (hereinafter called the Trustees). Parties.

WHEREAS:—

(1) By a Conveyance (hereinafter called the Conveyance) bearing even date with but executed before these presents and made between A of the one part and the Trustees of the other part certain freehold property situate at —— and therein more particularly described was conveyed to the Trustees in fee simple Upon Trust to sell the same or any part thereof with power to postpone sale and to stand possessed of the net proceeds of sale (after payment of costs) and of the net rents and profits until sale (after payment of outgoings) upon the trusts declared by a Declaration of Trust therein referred to being these presents. Recitals: conveyance;

(2) The Trustees are the trustees of the —— Association. trustees of association;

(3) By the Rules of the Association it is provided that the freehold property of the Association should be vested in the Trustees thereof upon trust for sale with power to mortgage the same but that they should exercise their powers and deal with and dispose of the said property and the proceeds of sale thereof in accordance with the directions of the Committee (*a*). rules.

NOW THIS DEED WITNESSETH as follows:—

1. The Trustees hereby declare that they will stand possessed of the said property comprised in the Conveyance Upon Trust to deal with and dispose of the same and the proceeds of sale thereof or permit the same to be used in all respects as directed by the Committee of the Association or otherwise as provided by the Rules for the time being thereof but so that no purchaser or mortgagee shall be concerned to see that such direction has been given. Declaration of Trust.

(*a*) The provisions of the Declaration may of course require alteration to accord with the Rules. It is assumed that the Rules provide for new trustees when nominated to become trustees of the Declaration of Trust.

Power to appoint new trustees.

2. The statutory power to appoint new trustees applicable to the Conveyance shall be so exercised that the persons nominated in accordance with the Rules as trustees of the Association shall be appointed trustees thereof.

IN WITNESS etc.

Form 5

Trust Deed of Charity to be maintained by voluntary subscriptions and to be under the direction of a Committee, giving wide general powers of investment in land etc (*a*).

Parties.

THIS TRUST DEED is made the —— day of —— 19— By A of etc. and B of etc. (hereinafter called the Trustees).

Recitals of resolution of Subscribers approving draft, etc.

WHEREAS (1) Certain persons (hereinafter called the Subscribers) have given sums of money for the furtherance of the charitable objects hereinafter mentioned

(2) By a resolution passed at a meeting of the Subscribers held on the —— day of —— 19— it was resolved that the Trustees should be nominated as the original trustees for the purpose of holding and applying the said subscriptions and any further subscriptions and donations to be received in accordance with this Deed and that —— and —— should be the original members of the Committee hereby provided for and also that the draft of a deed for carrying out the intentions

(*a*) This Precedent is intended as an outline which can be expanded in accordance with the particular objects; though if this is done great care is needed to ensure that no non-charitable application of the fund is possible. It is usually safer to declare an overriding trust for purposes clearly charitable. It may be found suitable for small charities where money is to be collected and applied in accordance with the Committee's directions and where the Committee is to be entrusted with wide powers of carrying out the general intentions of the donors, *e.g.*, the provision of charitable hostels or clubs.

Land purchased will not be subject to the jurisdiction of the Charity Commissioners provided the charity is maintained partly by regular voluntary subscriptions and has some invested funds at the date of purchase. It will then be a mixed charity provided the land can be sold and the proceeds applied as income for the general purposes of the charity: *Re Orphan Working School, Alexandra Orphanage's Contract* [1912] 2 Ch. 167.

of the Subscribers and declaring the trusts powers and provisions upon and subject to which the said subscriptions and donations should be held (being this Deed) should be approved.

NOW THIS DEED WITNESSETH as follows:—

Declaration of trust for charitable purposes.

1. THE Trustees hereby declare that they and the survivors or survivor of them or other the Trustees or trustee hereof for the time being will hold the said sums so subscribed as aforesaid when the same shall be paid to them and all other subscriptions donations bequests and other moneys or property as and when the same shall be paid to or vested in them and the moneys investments and property from time to time representing the same

UPON TRUST to apply the same in accordance with the provisions hereinafter contained for the promotion of —— [set out the primary trust].

Name of charity.

2. THE name of the charity shall be ——.

Trustees to deal with property as Committee directs.

3. THE TRUSTEES shall deal with and dispose of the said moneys investments and property and the proceeds of sale and the income rents and profits thereof in all respects in accordance with the directions of the Committee and shall be entitled to be indemnified out of the funds of the Charity against all liabilities in respect of such investments and property and in particular shall invest all or any part of such monies from time to time in such investments (including the purchase of land for investment or occupation) or upon such security as the Committee shall from time to time direct or place the same on deposit with a bank.

Trustees to use premises for purposes of charity.

4. THE Trustees shall if so directed by the Committee take on lease any premises and erect pull down rebuild enlarge alter and equip any premises leased or purchased and shall permit the same to be used for the purposes of the primary trust hereinbefore declared on such terms as the Committee shall think fit.

Land to Conveyed to Trustees on trust for sale.

5. LAND or premises acquired hereunder shall be conveyed or assigned to the Trustees upon trust to sell the same with power to postpone sale and to hold the net proceeds of sale and other capital moneys and the net rents and profits until

sale upon the trusts and with and subject to the powers and provisions of this Deed. The statutory power to appoint new trustees shall be expressed to apply to the trust for sale declared by such conveyance or assignment and the Trustees shall be given power thereby to raise money by mortgage for any purpose. Such respective powers shall be exercised in accordance with the directions of the Committee but no purchaser or mortgagee shall be concerned to see that any such direction has been given. The proceeds of sale of such land or premises shall be applicable either as capital or income for the general purposes of the said primary trust as the Committee shall from time to time direct.

Power to resign.

6. A Trustee may at any time by writing under his hand resign his office but shall execute a proper deed of retirement from any trust for sale.

Powers of Committee.

7. THE general management and control of the charity for the purpose of carrying out the primary trust aforesaid shall be vested in the Committee and (without prejudice to the generality of their powers) they shall have power to do all or any of the following things that is to say:—

(1) To enter into contracts and borrow money

(2) To appoint officers and servants at such remuneration (if any) as they think fit

(3) To receive grants donations and subscriptions

(4) To make such rules and regulations from time to time for the management and conduct of any premises or otherwise as they think fit

(5) To appoint or remove new trustees of this Deed or of such Conveyances and assignments as aforesaid but so that in relation to such Conveyances and Assignments a deed of appointment or retirement to carry out such appointment or removal shall be executed. The number of Trustees shall not exceed four or be less than two

(7) To cause to be formed and incorporated under the Companies Acts a Company registered with such memorandum and articles of association as they shall determine and to transfer or cause to be transferred to such Company any

property held on the trusts hereof but subject to the trusts affecting the same.

8. PROPER books of account shall be kept by or on behalf of the Trustees and entries made therein of all receipts and payments and such accounts shall be audited annually by a qualified chartered accountant to be selected by the Committee. Accountants.

9. THE Committee shall be constituted and its meetings regulated in accordance with the provisions contained in the Schedule hereto. Constitution at meetings of Committees.

10. IF at any time the Committee shall be of opinion that the provisions hereof cannot in the circumstances continue to be carried out in accordance with the intentions of the Subscribers they may by resolution determine that the property investments and funds of the Charity shall be transferred to another charity of a similar nature or be applied for any other similar charitable purpose determined by the Committee in accordance with a scheme to be settled by the Committee and that for the purpose of any such transfer any land or premises shall be sold and the net proceeds of sale so transferred. Power to determine charity.

11. THE Committee may from time to time by resolution revoke or vary any of the trusts powers and provisions hereof but so that the same when so varied shall be exclusively for purposes which are charitable in law and may direct that the Trustees execute a deed of variation accordingly. Power to vary trusts.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

1. THE said —— and —— shall be the first members of the Committee.

2. VACANCIES in the Committee shall be filled by resolution of the Committee but if the Committee shall at any time fall below the number necessary to form a quorum a new member or members may be elected by resolution of a meeting of the Subscribers for the time being.

3. THE Committee shall meet at least once a month and shall hold an annual meeting during the month of —— A

special meeting may be convened at any time by any member of the Committee.

4. AT least one ——'s notice shall be given of every meeting and such notice shall state the time and place of the meeting and the nature of the business to be transacted thereat.

5. A MEETING may be adjourned without any notice being sent to members not present thereat.

6. —— members of the Committee shall form a quorum.

7. THE first Chairman shall be —— who shall remain in office till the end of the next annual meeting at which meeting and at every subsequent annual meeting the Committee shall elect one of their members as Chairman who shall remain in office until the end of the next annual meeting.

8. IF the office of chairman shall become vacant during his year of office the Committee may at a special meeting appoint another chairman to remain in office till the end of the next annual meeting.

9. IF the chairman shall not be present within ten minutes after the time appointed for a meeting the members of the Committee then present shall appoint one of their number to act as chairman during that meeting.

10. THE decisions of the majority of the members of the Committee present at a meeting shall be binding. In case of equality of votes the Chairman shall have a second or casting vote.

11. MINUTES of the proceedings of the Committee shall be kept and shall be signed by the chairman of the meeting and when so signed shall be conclusive evidence of what was done at the meeting.

12. THESE regulations may from time to time be altered at an annual or special meeting of the Committee.

Form 6

Registered Charge of Freeholds together with the benefit of covenants by adjoining owners to pay their proportion of the cost of upkeep of the common entrance drive (*a*)

H. M. LAND REGISTRY
LAND REGISTRATION ACTS, 1925 and 1936

County or County Borough: ——

Title No.: ——

Property: ——

1. —— of —— 19—. In consideration of the sum of —— pounds (£——) the receipt whereof is hereby acknowledged, I, A of etc. AS BENEFICIAL OWNER hereby charge the land comprised in the title above referred to with the payment to B of etc. on the —— day of —— of the principal sum of —— pounds (£——) with interest at — per cent. per annum payable quarterly on the —— day of —— etc. in every year. Charge.

2. AND the said A hereby assigns unto the said B the benefit of the covenants on the part of the adjoining owners relating to the upkeep of the entrance drive contained in a Deed dated the —— day of —— 19— and made between C of the one part D of the second part and the said A of the third part [a copy whereof is filed at the Registry] to HOLD UNTO the said Assignment of covenants.

(*a*) It is assumed that a right of way in common with the adjoining owners is noted on the Register, and that by the deed creating it, the vendor and the adjoining owners entered into mutual covenants to pay their due proportion of the cost of upkeep. The benefit of such covenants would, it seems fairly clear, be annexed to the land and pass with it without express mention on a transfer by the chargee: *Shayler* v. *Wolf* [1946] Ch. 320. But there is some doubt whether the right to enforce them would be exercisable by the chargee during the subsistence of the charge. A registered charge operates as a charge by way of legal mortgage: Land Registration Act, 1925, s. 27 (1); the chargee has the same rights and remedies as if he had a term of 3,000 years. Notwithstanding the decision in *Smith* v. *River Douglas Catchment Board* [1949] 2 K.B. 500, there may be some doubt whether a person who is not in of the same estate as the covenantee could enforce the covenants: *Westhoughton U. D. C.* v. *Wigan Coal Co.* [1919] 1 Ch. 154. It is safer, therefore, to include an express assignment of the benefit, as in the above Precedent.

B absolutely but subject to the like right of redemption as affects the land hereby charged.

Covenants by Chargor;

3. And the said A for himself and the proprietor or proprietors for the time being of the land hereby charged doth hereby covenant with the said B his executors administrators and assigns that during the continuance of this Security the said A

to perform covenants;

(1) Will perform the covenants on his part relating to the upkeep of the entrance drive contained in the said Deed dated the —— day of —— 19—

to comply with planning law;

(2) Will comply in all respects with the provisions of the statutes statutory instruments orders and regulations relating to planning control for the time being in force and any order direction or requirement made thereunder and also any condition contained in any planning permission and will (without prejudice to any statutory indemnity) indemnify the said B his executors and administrators against all proceedings costs expenses claims and demands occasioned by any breach of this covenant

not to carry out development;

(3) Will not without the previous consent in writing of the said B carry out or suffer to be carried out any development within the meaning of the Town and Country Planning Act, 1947, or any statutory amendment or re-enactment thereof and if such consent shall be given will at his own expense apply for any necessary permission to the appropriate planning authority and will not commence or suffer to be commenced any such development until he shall have been granted such permission and produced the same to the said B [And any compensation for refusal of permission for such development or conditions attached to permission shall be payable to the mortgagor for his own benefit] (*b*)

to pass on notices;

(4) Will within seven days of the receipt thereof deliver to the said B full particulars of any notice order or proposal therefor served or made by any planning authority of which he has

(*b*) See Town and Country Planning Act (Mortgages, Rentcharges, etc.) Regulations, 1955, para. 4. The words in brackets are only applicable where there is an unexpended balance of development value.

notice affecting the land hereby charged and will take all reasonable or necessary steps to comply with such notice or order

(5) Will at the request of the said B make or join with the said B in making such objections representations or appeals in respect of any such notice order or proposal as the said B may reasonably require and will indemnify the said B from and against all costs charges and expenses incurred or paid by the said B in respect of such objections representations or appeals And that all costs charges expenses claims and demands against which the said A in this charge covenants to indemnify the said B shall be deemed to be properly incurred by the said B. to join in applications;

(6) Will keep the messuages buildings and property now or for the time being comprised in or subject to this security in good and substantial repair and insured against loss or damage by fire to the full value thereof in the —— Insurance Office or in some other insurance office or with underwriters of repute to be approved in writing from time to time by the said B in the joint names of the said A and the said B and will duly and punctually pay all premiums and other moneys necessary for effecting and keeping on foot such insurance immediately upon the same becoming due or within one week thereafter and will on demand produce to the said B the policy or policies of such insurance and the receipt for every such payment And that if default shall be made by the said A in keeping the said premises or any part thereof in good and substantial repair or in effecting or keeping up such insurance as aforesaid or in producing any such policy or receipt to the said B on demand the said B may repair and keep the said premises or any part thereof in repair (with power to enter on the land hereby charged for that purpose but without becoming liable as mortgagee in possession) or may insure and keep the same insured in any sum not exceeding £—— And that all moneys so expended by the said B shall be deemed to be properly paid by the said B And further that moneys received on any insurance of the property hereby charged (whether or not effected in pursuance of this present covenant) shall be applied either in making good the loss or in reduction of the mortgage debt as the said B may to repair and insure.

require and that all moneys received under any such last-mentioned insurance shall be held by the said A in trust for the said B.

Covenant as to permitted use.

4. THE said A hereby covenants with the said B that the permitted use of the property hereby charged for the purpose of the Town and Country Planning Act, 1947, is as a [single private dwelling-house and curtilage] And if the said A shall have committed any breach of this covenant the statutory power of sale applicable hereto shall be exercisable as at the date of this Charge without the necessity of giving any notice to the said A.

Restriction on leasing.

5. AND it is hereby agreed and declared between the said A and B for themselves and their successors in title that

(1) The said A shall not exercise his powers (whether by statute or apart from statute) of leasing or agreeing to lease or of accepting or agreeing to accept a surrender of a lease without the consent in writing of the said B which need not be expressed in any such lease agreement or surrender

Charge of mortgagees expenses.

(2) All costs charges and expenses properly incurred hereunder by the said B and all moneys properly paid by the said B shall (together with interest thereon at the rate of £—— per cent. per annum) be charged on the property for the time being subject to this security and shall on the same being paid be repaid on demand by the said A to the said B with interest thereon from the time of payment at the rate aforesaid PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the said B may or but for the said charge would have for the moneys thereby secured or any part thereof (*c*).

IN WITNESS, *etc.*

(*c*) If it is desired to include indemnity costs in proceedings relating to the charge the form at p. 663 of Vol. 18 of *The Conveyancer* may be used instead.

Form 7

Conveyance to the Trustees of an unincorporated Society where the Trusts are disclosed (*a*).

THIS CONVEYANCE is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Vendor) of the one part and B of etc. C of etc. and D of etc. (the trustees of the —— Association and hereinafter called the Purchasers) of the other part. Parties.

WHEREAS:— Recitals:

(1) The Vendor is the estate owner of the fee simple of the property hereinafter described in possession free from incumbrances seisin of vendor:

(2) Pursuant to a Resolution duly passed at a meeting of the Committee of the said Association held on the —— day of —— at —— the Purchasers have agreed to purchase from the Vendor the said property for a like estate for the sum of £X agreement for sale.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £X on or before the execution hereof paid by the Purchasers out of the funds of the Association to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) the Vendor AS BENEFICIAL OWNER hereby conveys unto the Purchasers Conveyance.

ALL THAT etc. Parcels.

TO HOLD unto the Purchasers in fee simple Habendum.

IN TRUST to sell lease mortgage charge or otherwise dispose of the same or permit the same to be used in accordance with directions given under the Rules for the time being of the said Association but so that no purchaser or mortgagee shall be concerned to see that any such direction has been given or as to the validity thereof (*b*).

(*a*) See notes to Precedent 3, p. 667, *ante*. The reference in the second paragraph of note (*a*) implied in the words "(as in the Precedent)" should have been to the present Precedent and not to the one at p. 667. That Precedent does not bring the trusts on the title, but under the present one a purchaser may be concerned with the Rules.

(*b*) Whether a purchaser must accept a provision exempting him from inquiry as to the giving of a direction without seeing that it is authorised by the Rules seems doubtful.

[2. Acknowledgment and undertaking as to documents.]

[3. Statement as to value.]

IN WITNESS etc.

Form 8

Deed of Mutual Covenants between Owners of Maisonettes (*a*).

(*Drafted by* E. H. SCAMELL, LL.M., *of Lincoln's Inn.*)

THIS DEED OF COVENANT is made the —— day of —— 195— BETWEEN AB of etc. (hereinafter referred to as "AB" which expression shall where the context so admits include his successors in title and the persons claiming through or under him) of the one part and CD of etc. (hereinafter referred to as "CD" which expression shall where the context so admits include his successors in title and the persons claiming through or under him) of the other part

Recitals: of interest,

WHEREAS:—

(1) AB is the registered proprietor of all that ground floor maisonette and premises situate at and known as . . . aforesaid being the property comprised in the Title numbered —— (hereinafter referred to as "the Lower Maisonette")

(2) CD is the owner in fee simple in possession of all that first floor maisonette and premises situate at and known as . . .

(*a*) (1) The Deed should be engrossed and executed in duplicate (or as the case may require) by the parties, one copy being retained by each.

(2) Execution should not take place until the parties are in fact legal estate owners of their respective maisonettes since to be fully effective positive covenants must be entered into with the owner of a legal estate.

(3) The rights of entry reserved in Clause 5 should be noted in the Charges Register of the titles to the respective maisonettes: see L.R.R. 7 (c).

(4) Application should also be made to the Registrar to note the *benefit* of the rights of entry and of the covenants on the Property Register of the respective maisonettes.

(5) It will, of course, be necessary to protect the restrictive covenants by notice on the Charges Register of the respective servient maisonettes

aforesaid being the property comprised in the Title numbered —— (hereinafter referred to as "the Upper Maisonette")

(3) It has been agreed that for the preservation of the character and value of the Lower Maisonette and the Upper Maisonette and for the mutual benefit of AB and CD that AB and CD should enter into this Deed of Covenant

of agreement.

NOW THIS DEED made in pursuance of the said agreement and in consideration of the premises WITNESSETH as follows:

1. AB with the intent to bind all persons who shall for the time being be the owner of any estate or interest in or the occupier of the Lower Maisonette (but so far only as regards covenants which are restrictive of the user of the Lower Maisonette not so as to be personally liable under this Deed after he shall have parted with all his estate and interest in the same) hereby covenants with CD for the benefit of the Upper Maisonette that he will from time to time and at all times hereafter:

Covenants: by owner of lower maisonette;

(1) Put keep and maintain in good and sufficient repair and condition both as respects structure and decoration the following parts of the Lower Maisonette that is to say (i) the exterior and interior walls up to the level of the underside of the floor joists of the Upper Maisonette (ii) the entrance door or doors porches and windows (iii) the floors and floor timbers (including joists) and ceilings (iv) the gas water and waste pipes drains electric cables and wires (other that as mentioned in subclause (2) of clause 2 hereof)

(2) Put keep and maintain in good and sufficient repair and condition as aforesaid the boundary walls and fences in or upon the garden land and premises enjoyed with the Lower Maisonette and/or the Upper Maisonette

(3) So far as regards the Lower Maisonette observe the restrictions set forth in the First Schedule hereto

(4) Contribute and pay one equal half part of the costs and expenses of the matters mentioned in the Second Schedule hereto

(5) Permit CD and his surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Lower Maisonette to view and examine the

state and condition thereof for the purposes of the covenants and provisions herein contained

(6) Permit CD and his surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Lower Maisonette or any part thereof for the purpose of repairing any part of the Upper Maisonette and for executing any other repairs which CD has herein covenanted to execute and for the purpose of making repairing maintaining and testing drainage gas and water pipes and electric cables and wires and for similar purposes so however that the works inspections repairs or alterations shall be done with all despatch causing as little disturbance as possible and that CD shall make good all damage done in carrying out the said works inspections repairs or alterations to the Lower Maisonette and to all decorations fixtures and movable chattels therein.

by owner of upper maisonette.

2. CD with the intent to bind all persons who shall for the time being be the owner of any estate or interest in or the occupier of the Upper Maisonette (but so far only as regards covenants which are restrictive of the user of the Upper Maisonette not so as to be personally liable under this Deed after he shall have parted with all his estate and interest in the same) hereby covenants with AB for the benefit of the Lower Maisonette that he will from time to time and at all times hereafter:

(1) Put keep and maintain in good and sufficient repair and condition both as respects structure and decoration the following parts of the Upper Maisonette that is to say (i) the roof and staircase or stairway (ii) the exterior and interior walls from the level of the underside of the floor joists of the Upper Maisonette up to the roof or extremity of such walls (iii) the entrance door or doors porches and windows (iv) the floors and floor timbers (including joists) and ceilings (v) the gas water and waste pipes drains electric cables and wires

(2) Put keep and maintain in good and sufficient repair and condition as aforesaid the external waste water ways and soil pipes in or upon the Upper Maisonette or the Lower Maisonette

(3) So far as regards the Upper Maisonette observe the restrictions set forth in the First Schedule hereto.

(4) Contribute and pay one equal half part of the costs and expenses of the matters mentioned in the Second Schedule hereto

(5) Permit AB to erect or instal or cause to be erected or installed and to support on any suitable wall walls chimney stack or chimney stacks of the Upper Maisonette or in the loft thereof any aerial or aerials for the purpose of television or radio reception and to affix (as unobtrusively as possible) any necessary wires or cables in connection therewith in or upon the Upper Maisonette and for the purposes aforesaid and also for the purpose of inspecting repairing replacing or altering any such installation upon notice to enter with or without workmen and others into and upon the Upper Maisonette so however that the work of installation inspections repairs or alterations shall be done with all despatch causing as little disturbance as possible and that AB shall make good all damage done in carrying out the said works inspections repairs or alterations to the Upper Maisonette and to all decorations fixtures and movable chattels therein

(6) Permit AB and his surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Upper Maisonette to view and examine the state and condition thereof for the purposes of the covenants herein contained.

(7) Permit AB and his surveyors or agents with or without workmen and others at all reasonable times on notice to enter into and upon the Upper Maisonette or any part thereof for the purpose of repairing or altering any part of the Lower Maisonette and for executing any other repairs which A.B. has herein covenanted to execute and for the purpose of making repairing maintaining and testing drainage gas and water pipes and electric wires and cables and for similar purposes so however that the works inspections repairs or alterations shall be done with all despatch causing as little disturbance as possible and that AB shall make good all damage done in carrying out the said works inspections repairs or alterations to the Upper

Maisonette and to all decorations fixtures and movable chattels therein.

Covenant to procure a transferee to enter into like covenants.

3. AB hereby further covenants with CD that if and when AB shall transfer or create any estate or interest in or part with possession of the Lower Maisonette in favour of another person or persons (natural or artificial) AB shall procure such other person or persons to enter into the following covenants which shall be expressed to be for the benefit of and enforceable by CD or other the owner or owners (as well as occupiers) for the time being of a legal estate in the Upper Maisonette to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the owner or owners for the time being of the Upper Maisonette that is to say (1) covenants in terms similar to the covenants contained in clause 1 hereof or as near thereto as possible (2) a covenant in terms similar to the present covenant or as near thereto as possible.

4. CD hereby further covenants with AB that if and when CD shall transfer or create any estate or interest in or part with possession of the Upper Maisonette in favour of another person or persons (natural or artificial) CD shall procure such other person or persons to enter into the following covenants which shall be expressed to be for the benefit of and enforceable by AB or other the owner or owners for the time being of a legal estate in the Lower Maisonette to the intent that such covenants may be enforced directly against such other person or persons aforesaid by the owner or owners (as well as occupiers) for the time being of the Lower Maisonette that is to say (1) covenants in terms similar to the covenants contained in clause 2 hereof or as near thereto as possible (2) a covenant in terms similar to the present covenant or as near thereto as possible.

Mutual covenants.

5. IT IS HEREBY AGREED AND DECLARED BETWEEN AB and CD as follows:

(1) In case at any time hereafter any dispute difference or question shall arise between AB and CD relating to the obligations created or imposed by this Deed including a dispute difference or question as to whether any repairs required to be executed for the cost and expense of which there is in accordance

with the provisions hereof equal liability between AB and CD then and in every such case such dispute difference or question shall be referred to the determination and award of a single arbitrator to be appointed in default of agreement by the then President of the Institute of Chartered Surveyors and any determination and award so given shall be final and binding.

(2) If at any time before the expiration of twenty-one years after the death of the last survivor of the descendants now living of His Late Majesty King George the Fifth AB shall fail to observe perform or fulfil the covenants to repair on his part herein contained or to execute or join in the execution of or cause to be executed the repairs for which provision is made in subclause (4) of clause 1 hereof in any such case and as often as the same shall happen then whether or not such failure or failures aforesaid shall constitute an actionable breach of covenant it shall be lawful for CD with or without workmen or others but without prejudice to any other remedy right or power available to CD in respect of such default and notwithstanding any actual or constructive waiver of any previous cause or right of entry or of any other right or claim on the part of CD (i) to enter and execute such works acts or things (if any) on the Lower Maisonette as shall be necessary or proper for repairing the same in accordance with the covenants on the part of AB hereinafter contained and (ii) to recover the cost of all sums of money expended by CD in or about such works acts and things as aforesaid and all sums of money due to be contributed and paid by AB under subclause (4) of clause 1 hereof together with all costs and expenses occasioned by the exercise of this power either (a) by remaining or entering (as the case may be) in possession or receipt of the rents and profits of the Lower Maisonette until thereby or otherwise all such sums are paid or (b) by action in debt and in the meantime all such sums as shall remain outstanding shall be a first charge upon the Lower Maisonette.

(3) If at any time before the expiration of twenty-one years after the death of the last survivor of the descendants now living of His Late Majesty King George the Fifth CD shall fail to

observe perform or fulfil the covenants to repair on his part herein contained or to execute or join in the execution of or cause to be executed the repairs for which provision is made in subclause (4) of clause 2 hereof etc. [as above].

IN WITNESS, *etc.*

FIRST SCHEDULE

(1) Not to use otherwise than as private dwelling.

(2) Not to play or allow to be played any radio to the annoyance of others.

(3) Not to display any placard in windows.

(4) Not to throw rubbish or any offensive or other matter out of windows.

(5) *Etc.*

SECOND SCHEDULE

Expense of chimney stacks gutters and rainwater pipes (except as mentioned in clause 2 (2)).

Form 9

Agreement for Hire-Purchase of a Caravan (*a*).

MEMORANDUM OF AGREEMENT made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Owner) of the one part and B of etc. (hereinafter called the Hirer) of the other part

WHEREBY IT IS AGREED as follows:—

Terms of Hire.

1. THE Owner shall let and the Hirer shall take on hire the Caravan described in the Schedule hereto for the term of —— years from the —— day of —— in consideration of the sum of £X (being 15 per cent. of the cash price for which the Hirer

(*a*) It is assumed that the price exceeds £300. If not, the agreement will fall within the Hire Purchase Acts 1938–1954, and must be made in a form to comply with the Acts.

The stamp duty is 6d.

could purchase the same from the Owner) (*b*) to be paid before the signing hereof and the rent of £Y for each month during the said term such rent to accrue from day to day but to be paid in advance on the 1st day of each month the first payment to be made on the signing of this Agreement.

Hirer to pay rent, etc.

2. THE Hirer shall pay the said rent on the days and in manner aforesaid and shall duly and punctually pay all rent rates taxes parking fees and other moneys payable under any licence or otherwise in respect of any premises on which the Caravan shall at any time be and shall protect the Caravan from distress.

Hirer not to assign or pledge Caravan.

3. THE Hirer shall not at any time during the subsistence of this Agreement sell pledge charge sublet or dispose of the Caravan or suffer any lien to be created thereon (other than that of a repairer) and shall not charge or assign the benefit of this Agreement.

Hirer not to remove from United Kingdom.

4. THE Hirer shall not without the consent in writing of the Owner remove the Caravan outside England Wales and Scotland or suffer it to be taken out of his possession or be towed by any other person and shall on request inform the Owner where it is from time to time.

Repair and Insurance.

5. THE Hirer shall at all times during the continuance of this Agreement keep the Caravan and the fixtures and fittings thereof in good repair and condition (reasonable wear and tear only excepted) and shall permit the Owner to enter the premises whereon the same may be from time to time to inspect the state and condition thereof And shall insure and keep insured the same against loss or damage by fire or theft and against accident or damage in the joint names of the Owner and the Hirer to the full amount of the purchase price in some insurance office to be approved by the Owner And shall duly and punctually pay all premiums necessary for effecting and keeping up such insurance And shall produce the policy and the receipt for every such premium to the Owner on demand And all moneys received

(*b*) See Hire Purchase and Credit Sales (Control) Order, 1955 (S.I. 1955, No. 297). The instalments must not extend over more than 24 months.

in respect of such insurance during the continuance of this Agreement shall be applied in repairing the damage done to or in restoring or replacing the Caravan And the Hirer shall indemnify the Owner against all third party claims.

Owner's power to determine.

6. If (a) default shall be made by the Hirer in the payment of any rent hereby reserved for 3 days after the same shall become due (whether payment thereof shall have been demanded or not) or

(b) if the Hirer shall not perform and observe all the stipulations herein contained and on his part to be observed and performed, or

(c) any execution or distress for rents rates or taxes shall be levied on the goods of or against the Hirer, or

(d) if a receiving order shall be made against the Hirer or he shall make any assignment for the benefit of or compound with his creditors then and in any of such events the Owner may by notice in writing forthwith absolutely determine this Agreement and his consent to the Caravan being in the possession order or disposition of the Hirer Provided that the determination of the Agreement under this clause shall not discharge the Hirer from any liability previously accrued thereunder.

Hirer's power to determine.

7. The Hirer may at any time before the last instalment of the rent hereby reserved shall fall due and on payment of the sum hereinafter mentioned by notice in writing determine this Agreement.

Minimum payment clause.

8. (1) On determination of this Agreement by either party under the powers for that purpose hereinbefore contained the Hirer shall be liable to pay to the Owner (without prejudice to his liability for all sums accrued due hereunder including damages for breach of any term hereof) such a sum for depreciation of the Caravan as together with any sums already actually paid by the Hirer hereunder shall make up one half of the purchase price of the Caravan (*c*).

(2) For the purposes hereof the expression " purchase price "

(*c*) The minimum payment must be a genuine estimate of the difference in value between the article as new and secondhand. *Landon Trust, Ltd.* v. *Hurrell* [1955] 1 All E.R. 839.

shall mean the aggregate of all the instalments of the rent hereby reserved the said premium of £X and the sum of 10s. payable on the exercise of the option hereinafter contained.

Option to purchase.

9. AT any time during the continuance of this Agreement or within —— months after the expiration by effluxion of time of the said term and provided there shall have been no breach by the Hirer of the terms of this Agreement the Hirer may on payment to the Owner of the total amount of the instalments or instalment (if any) then remaining unpaid of the rent hereby reserved and the further sum of 10s. purchase the Caravan PROVIDED that the tender of such payment as aforesaid shall be a condition precedent to the exercise of the option to purchase conferred by this clause and the Owner shall be under no liability to sell the Caravan on credit or without such payment as aforesaid being first made and any notice of intention to exercise the said option shall not constitute a binding agreement to purchase or sell the Caravan unless it is accompanied by such payment as aforesaid.

Property in Caravan.

10. No property or interest other than that of Hirer shall be vested in or pass to the Hirer unless and until he shall have purchased the same under the option hereinbefore contained and (except in the event of the Hirer so purchasing the same) he shall on the expiration of the said term or other sooner determination of this Agreement peaceably and quietly deliver up the Caravan to the Owner at —— in good repair and condition (reasonable wear and tear only excepted).

Warranty excluded.

11. No warranty or condition as to the quality or fitness for any purpose of the Caravan shall be implied herein.

Notices.

12. ANY notice hereunder shall be sufficiently served if served in accordance with section 196 of the Law of Property Act, 1925.

AS WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

[This will contain particulars of the Caravan.]

Form 10

Agreement for Hire of a Houseboat at Moorings (*a*).

Parties.

An Agreement made the —— day of —— 19— between A of etc. (hereinafter called the Owner) of the one part and B of etc. (hereinafter called the Hirer) of the other part.

Agreement for hiring.

1. The Owner shall let on hire to the Hirer the Houseboat at present moored on the —— River at —— (particulars whereof are contained in the Schedule hereto) on the terms hereinafter contained from the —— day of —— until the hiring shall be terminated in accordance with the provisions of this Agreement.

Monthly rent.

2. The Hirer shall pay to the Owner the rent of £— per calendar month and so on in proportion for any less period than a month such rent to be paid by the Hirer [in advance] on the —— day of every month the first payment to be made [on the signing of this Agreement] on the —— day of —— next.

Hirer's power to terminate hiring.

3. The Hirer may at any time on giving [one] month's notice in writing to the Owner terminate the hiring on returning the Houseboat to the Owner.

Owner's power to terminate hiring.

4. The Owner may at any time [after the expiration of —— months from the date hereof] terminate the hiring by giving [one] month's notice in writing to the Hirer.

Repair and Insurance.

5. The Hirer shall at all times during the hiring keep the Houseboat and the fixtures and fittings thereof in good repair and condition (reasonable wear and tear only excepted) And shall insure and keep insured the same against loss or damage by fire or theft and against accident or damage in the joint names of the Owner and the Hirer in the sum of £— in some insurance office to be approved by the Owner and shall punctually pay all premiums and other moneys necessary for effecting and keeping up such insurance and shall whenever required produce to the Owner the policy and the receipt for the last premium And all moneys received in respect of such insurance

(*a*) The stamp will be 5s. per £5 of the monthly sum payable. The agreement does not require registration as a bill of sale.

during the hiring shall be applied in repairing the damage done to or in restoring or replacing the Houseboat.

Hirer to protect from distress etc.

6. THE Hirer shall duly and punctually pay all rates payable in respect of the Houseboat and obtain the consent of the appropriate authority to moor the Houseboat on the —— River or elsewhere and shall not do or permit to be done anything whereby the said licence may be rescinded and shall not without the written consent of the Owner remove the Houseboat from its present moorings and shall protect the same from distress.

Hirer not to dispose of houseboat.

7. THE Hirer shall not lend pledge charge underlet dispose of or part with the possession of the Houseboat (either directly or indirectly) to any person or persons whomsoever.

Hirer to permit access to houseboat

8. THE Hirer shall if the consent of the Owner shall be given to remove the Houseboat from its moorings inform the Owner where it is for the time being situated and shall (whether such consent shall be given or not) permit the Owner to have access thereto at all reasonable times for the purpose of inspecting the condition thereof.

Owner's power to retake on default.

9. IF default shall be made by the Hirer in the payment of any rent hereunder for 3 days after the same shall have become due (whether payment shall have been demanded or not) or if the Hirer shall not observe and perform all his obligations hereunder or if any execution shall be levied on the goods of or against the Hirer or a receiving order shall be made against him or he shall make any assignment for the benefit of or compound with his creditors the Owner may by notice in writing forthwith terminate this Agreement without prejudice to any previous accrued liability of the Hirer and may resume possession of the Houseboat.

Hirer to give up possession on termination.

10. ON termination by any means of the hiring the Hirer shall peaceably and quietly deliver up the Houseboat to the Owner at —— aforesaid in good repair and condition (reasonable wear and tear excepted) and the Owner may enter on any premises and remove the same.

AS WITNESS, *etc.*

THE SCHEDULE ABOVE REFERRED TO

[This will contain particulars of the Houseboat.]

Form 11

Agreement for Sale of a Motor Launch where the Vessel is Registered as a British Ship (*a*).

An Agreement made the —— day of —— 19— between A of etc. (hereinafter called the Vendor) of the one part and B of etc. (hereinafter called the Purchaser) of the other part.

Agreement for sale.

1. The Vendor agrees to sell and the Purchaser agrees to purchase the Motor Launch —— registered at the Port of —— (hereinafter called the Vessel) of which the Vendor is the sole registered owner of 64/64th shares.

Price and deposit.

2. The purchase price shall be the sum of £X whereof £Y has been paid as a deposit to the Vendor's agents as stakeholders on the signing hereof and the balance shall be paid (without interest) on the —— day of —— and time shall be of the essence of the contract.

No warranty implied.

3. No warranty or condition as to the fitness of the Vessel for any purpose shall be implied.

Agreement to be conditional on survey.

4. This Agreement is conditional on the Vessel passing a survey by a qualified surveyor nominated by the Purchaser [or Lloyd's surveyor] such survey to be made at the Purchaser's expense and the parties hereto shall forthwith do all things necessary to obtaining such survey. In the event of the Vessel not passing such survey to the satisfaction of the said surveyor then this Agreement shall determine forthwith and the Purchaser shall pay to the Vendor the cost (1) of having put the Vessel on the slips if this shall be required by the Purchaser or surveyor and putting her back in her berth or moorings after slipping and (2) making good any damage done to the hull engines and equipment by such survey and subject to the payment of such costs by the Purchaser the Vendor shall repay to the Purchaser the deposit (but without interest).

(*a*) No stamp duty. The agreement is exempt as an agreement for the sale of goods. The title must be transferred by a bill of sale in the prescribed form, which is also exempt from stamp duty under s. 721 of the Merchant Shipping Act, 1894.

If the title is not registered and the price is to be paid on delivery, only a receipt for the purchase-money and an inventory will be required.

[5. CERTAIN alterations and additions have been made to the Vessel which have not been noted on the Vessel's certificate of registration and the Vendor shall before completion at his own expense have such alterations and additions surveyed by the proper authorities and entered on the certificate of registration (*b*).] Alterations since registration.

6. ON payment of the balance of the purchase-money the Vendor shall execute a bill of sale to the Purchaser in the prescribed form and shall deliver to him the Vessel's certificate of Registry (*c*). Bill of Sale, etc., to be handed over on completion.

7. UNTIL completion the Vessel shall be at the risk of the Purchaser as to loss or damage by fire or theft but (subject to the consent of the insurance office and payment by the Purchaser on completion of a proportionate part of the premium for the unexpired term of the Vendor's existing policy) the Vendor will hold such policy in trust for the Purchaser but the Vendor shall not be bound to keep up or renew the insurance. Insurance.

8. IF owing to the neglect or default of the Vendor or the Purchaser the sale shall not be completed on the said —— day of —— this Agreement shall become void and if the neglect or default shall be that of the Vendor he shall pay to the Purchaser the sum of £Z as liquidated and ascertained damages and not as a penalty and shall return the deposit (but without interest) and if the neglect or default shall be that of the Purchaser the deposit shall be forfeited to the Vendor. Provisions on default.

AS WITNESS, *etc.*

(*b*) See Merchant Shipping Act, 1894, ss. 48, 49. The vessel may have been converted into one of a different class, *e.g.*, by the removal of a mast or a new engine.

(*c*) The Purchaser will have to make the necessary declaration of transfer.

Form 12

Mutual Notice to Sever a Joint Tenancy in Equity (*a*).

To ALL whom it may concern:

1. WE the undersigned, are the joint registered proprietors [*Legal estate owners*] of the freehold property known as [*description*] [registered with an absolute Title under the Title number ——] and are beneficially entitled to the same and to the proceeds of sale thereof as joint tenants in equity absolutely.

2. UNDER and by virtue of the power vested in us and each of us by the provisions of section 36 (2) of the Law of Property Act, 1925, we, the said undersigned, hereby give notice that we desire to sever the said joint tenancy in equity and hereby declare that the said joint tenancy is duly severed in equity to the intent that we shall henceforth hold the said property in our names as joint tenants upon the statutory trusts for ourselves as tenants in common in equal shares.

(*a*) (1) The proviso to section 36 (2) of the Law of Property Act, 1925, created a new and additional method of converting an equitable joint tenancy in proceeds of sale into a tenancy in common, *viz.*, by means of a notice to sever. For the methods of severance at common law in the case of personal estate, see *Re Denny*, [1947] L.J.R. 1029.

(2) The proviso is expressed only to apply where a legal estate is vested in joint tenants beneficially. Theoretically, since a trust for sale arises as soon as the legal estate vests in the joint tenants, the beneficial interest in the *legal* estate is vested in no one, the only beneficial interest being in the notional proceeds of sale: see *Parker* v. *Rosenberg* [1947] K.B. 371. For the purposes of the proviso, it must be assumed, however, that the beneficial interest in the legal estate is in fact vested in the estate owners. Even on this basis, however, the proviso appears only to apply where the estate owners and the beneficiaries are the same persons. Thus, where A and B hold land upon trust for C and D as joint tenants this "notice" method of severance would not be available to C and D since the legal estate is not *vested in* C and D. Further it does not apply where the legal estate is settled land.

(3) The notice must be in writing, but no agreement is necessary; it may be unilateral.

(4) No stamp duty is leviable unless (which is not necessary) the notice is executed under seal.

(5) This form may readily be adapted to meet the case of a unilateral notice served by one joint tenant upon the others subject to note (2) above.

Form 13

Release of Restrictive Covenants (*a*).

(*Drafted by E. H. Bodkin, Barrister-at-Law.*)

THIS RELEASE is made the —— day of —— 19— BETWEEN A of etc. of the one part and B of etc. of the other part — Parties.

WHEREAS:—

Recitals: conveyance containing covenants;

(1) By a Conveyance (hereinafter called the Conveyance) dated etc. and made between the said A of the one part and C of the other part the plot of land numbered —— on the estate plan of the —— Estate situate at —— in the County of —— was in consideration of £X conveyed by the said A to the said C and the said C to the intent and so as to bind so far as practicable the property thereby conveyed into whosesoever hands the same might come and to benefit and protect the said —— Estate [the portion of the said —— Estate coloured pink on the plan annexed to the Conveyance] and every part thereof [but not so as to render the said C liable in damages for any breach of covenant after he should have parted with all interest in the premises in respect of which such breach should occur] covenanted with the said A to observe and perform the covenants and stipulations therein contained a copy whereof is set out in the Schedule hereto [And by the Conveyance it was provided that the said A and his successors in title owners of the portion of the said —— Estate for the time being unsold might release all or any of such covenants and stipulations] (*b*)

conveyance to B;

(2) By a Conveyance dated etc. and made between the said C of the one part and the said B of the other part the said C

(*a*) Stamp *semble* 10s.

See *Great Northern Ry.* v. *C. I. R.* [1901] 1 K.B. 416.

(*b*) If the covenant (as is sometimes the case) was entered into for the protection of such part of the estate as was for the time being unsold, the benefit of it would remain in, and could be released by, the covenantee if he retained any part of the estate: *Zetland* v. *Driver* [1937] 1 Ch. 651; [1939] Ch. 1. A power to release the covenants would generally be exercisable by the covenantee if he retained the bulk of the estate, even if the power did not annex the power to ownership of the part unsold: *Everitt* v. *Remington* [1893] 2 Ch. 148. If there was a building scheme it would be necessary (apart from any express power to release) to obtain the concurrence of all purchasers of plots on the estate.

in consideration of the sum of £Y conveyed to the said B the premises comprised in the Conveyance and the said B covenanted with the said C to observe and perform the said covenants and stipulations and to indemnify him against any breach thereof (*c*)

title to estate;

[(3) The said —— Estate (other than —— plots thereon which have been sold) is still vested in the said A]

agreement for release.

(4) It has been agreed that the said A shall in consideration of £Z release the said B from the said covenants and stipulations [to the extent hereinafter appearing] (*d*)

Now this Deed witnesseth as follows:—

Release.

1. [In exercise of the recited power and of all other powers (if any) him enabling in that behalf and] in consideration of the sum of £Z now paid by the said B to the said A (the receipt whereof the said A hereby acknowledges) the said A hereby releases the said B and his successors in title from the said covenants in the Conveyance [the covenant in the Conveyance prohibiting the erection of a dwelling-house of less value than £——.]

Covenants for title.

[2. The said A hereby covenants with the said B that notwithstanding anything by the said A or anyone through whom he derives title otherwise than by purchase for value made done executed or omitted or knowingly suffered the said A has full power to release the said restrictions and stipulations in manner hereinbefore expressed And further that the said A and every other person having or rightfully claiming any estate or interest in the benefit of the said covenants and stipulations by through under or in trust for the said A or by through or under any one through whom the said A derives title otherwise than by purchase for value will at all times hereafter on the request and at the cost of the said B or any person deriving title under him execute and do all such lawful assurances and things for

(*c*) It is not necessary for C to join in the release, as the covenants with him are for indemnity only.

(*d*) It is preferable to have at least a nominal consideration, though even trustees for sale could release voluntarily: Settled Land Act, 1925, s. 58 (2).

further or more perfectly releasing the said covenants and stipulations according to the true intent and meaning hereof as by him or any of them shall be reasonably required] (*e*).

[3. ACKNOWLEDGMENT for production of documents if not already given.]

IN WITNESS etc.

THE SCHEDULE ABOVE REFERRED TO

[This will contain a copy of the covenants.]

Form 14

Assignment by Mortgagor of Leaseholds of the Head Term to the Executors of the Survivor of the Mortgagees in consideration of a Release of the Mortgage Debt (*a*).

THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Vendor) of the one part and B of etc. and C of etc. (hereinafter called the Purchasers) of the other part Parties.

WHEREAS:— Recitals:

(1) By a Lease (hereinafter called the Lease) dated etc. and made between X of the one part and Y of the other part ALL THAT messuage etc. was demised to the said Y from the —— lease;

(*e*) If covenants for title are desired it appears to be necessary for them to be given expressly. The release would not, it seems, be an assurance of property within s. 77 of the Law of Property Act: see s. 205 (1) (ii).

(*a*) Under s. 113 of the Law of Property Act, 1925, a person dealing in good faith with the survivor of the mortgagees, or, by virtue of the definition in s. 205 (1) (xvi), with any person deriving title under the survivor, is entitled to assume that he had power to release the debt. The personal representatives of the deceased mortgagee derive title under the surviving mortgagee and have power under s. 15 of the Trustee Act, 1925, to compound debts and claims, and they could, it is submitted, in favour of a purchaser deal with the mortgage as the deceased could have done himself. Consequently no future purchaser can raise any question as to the powers of the purchaser in the above case to release the debt in consideration of an assignment of the head term, or to inquire whether the mortgagees were trustees.

day of —— 19— for the term of —— years at the yearly rent of £—— and subject to the covenants on the part of the lessee and conditions therein contained

assignment to vendor;

(2) By virtue of divers mesne assurances acts in the law and events and ultimately by an assignment dated the —— day of —— 19— and made between Z of the one part and the Vendor of the other part the premises comprised in the Lease became vested in the Vendor for all the residue of the said term of —— years subject to the rent reserved by and the covenants and conditions contained in the Lease

mortgage to purchasers;

(3) By a Mortgage (hereinafter called the Mortgage) dated the —— day of —— 19— and made between the Vendor of the one part and D, E and F of the other part the premises comprised in the Lease were demised by the Vendor to the said D, E and F for the residue of the said term of —— years granted by the Lease except the last ten days thereof by way of mortgage for securing payment to the said D, E and F of the sum of £—— belonging to them on a joint account with interest thereon at the rate of £—— per cent. per annum

death of two mortgagees;

(4) The said D died on the —— day of —— 19—

(5) The said E died on the —— day of —— 19—

death of survivor appointing purchasers his executors;

(6) The said F died on the —— day of —— 19— having by his Will dated the —— day of —— 19— appointed the Purchasers to be the executors thereof who duly proved and registered the same in the —— Probate Registry on the —— day of —— 19—

state of debt;

(7) There is now due on the security of the Mortgage the principal sum of £—— with the sum of £—— for interest thereon

agreement for sale.

(8) The Purchasers have agreed to purchase and the Vendor has agreed to sell free from incumbrances the premises comprised in the Lease for the residue of the term thereby granted in consideration of the Purchasers releasing the Vendor from the covenant for payment of the said principal sum and interest contained in the Mortgage

Assignment of head term.

Now this Deed witnesseth as follows:—

1. In pursuance of the said agreement and in consideration

of the release hereinafter contained the Vendor AS BENEFICIAL OWNER hereby assigns unto the Purchasers ALL THAT the property comprised in and demised by the Lease

TO HOLD unto the Purchasers henceforth for all the residue of the term granted by the Lease subject henceforth to the payment of the rent and performance and observance of the covenants on the part of the lessee and conditions by and in the Lease reserved and contained and subject to the derivative term created by the Mortgage but free from all right of redemption and all claims under the Mortgage and as part of the estate of the said E deceased.

2. THE Purchasers hereby release the Vendor and his estate and effects from the said principal sum of £—— and the said sum of £—— for interest thereon and from all actions proceedings claims demands and liability in respect thereof or otherwise under the Mortgage. Release of covenant for payment.

3. THE Purchasers hereby declare that the derivative term created by the Mortgage shall forthwith merge in the head term and be extinguished. Declaration of merger of sub-term.

4. THE covenants in Part IX of the Second Schedule to the Law of Property Act 1925 shall be implied herein on the part of the Purchasers. Covenant to indemnify vendor.

[5. Certificate as to value.]

IN WITNESS etc.

Form 15

Deed of Exchange whereby the Tenant for Life Surrenders his Life Estate in part of the Property subject to the Settlement in Exchange for the Reversion in another part (*a*).

(*Drafted by E. H. Bodkin, Barrister-at-Law.*)

THIS DEED OF EXCHANGE is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Tenant for Life of Parties.

(*a*) Notice in writing of the Exchange must be given to the trustees of the Settlement. The Surrender will bring the Settlement to an end under s. 105 of the Settled Land Act in relation to the property surrendered and the tenant for life will convey the legal estate in this

the one part) and B of etc. (hereinafter called the Remainderman) of the other part

Recitals:

WHEREAS:—

title under settlement;

(1) Under and by virtue of

(a) a Settlement (hereinafter called the Settlement) dated the —— day of —— 19— and made between etc.

[(b) the Conveyances to the uses of the Settlement and subsidiary Vesting Deeds mentioned in the First Schedule hereto]

(c) a Vesting Deed dated etc. and made etc. being the Vesting Deed executed for giving effect to the requirements of the Settled Land Act 1925 in relation to the settlement and

(d) a Disentailing Deed dated the —— day of —— 19— and made between the Remainderman of the first part the Tenant for Life of the second part and X of the third part and in the events which have happened the lands [and capital moneys] mentioned in the Second and Third Schedules hereto are now vested as to the lands in the Vendor by virtue of the said Vesting Deed [and as to the capital moneys now stand in the names of the trustees of the Settlement] Upon Trust for the Tenant for Life during his life with power to charge portions for his younger children not exceeding if there shall be one such child the sum of £—— or if there shall be two or more such children the sum of £—— and subject thereto for the Remainderman (who is the eldest son and only child of the Tenant for Life) in fee simple or absolutely

agreement for exchange.

(2) The Tenant for Life has agreed to surrender his life estate in the lands [and capital moneys] mentioned in the First and Second parts of the said Second Schedule hereto respectively

---

property to the remainderman under s. 7 (5). A Precedent of such a conveyance will be found in Vol. 13, p. 560 of *The Conveyancer*. The Settlement will also come to an end in regard to the property taken by the tenant for life and the trustees will execute a deed of discharge under s. 17 as to such property.

No estate duty will be payable on the property taken by the tenant for life under the settlement, even if he dies within five years but any property retained by him will be chargeable as his own property. Estate duty will, however, be payable on the property taken by the remainderman in the event of the tenant for life's death within five years, notwithstanding the surrender was for value: Finance Act, 1940, s. 45; Finance Act, 1952, s. 43. *Att.-Gen.* v. *Llewellyn* [1935] 1 K.B. 94.

to the Remainderman in exchange for the equitable interest in remainder of the Remainderman in the lands [and capital moneys] mentioned in the First and Second Parts of the said Third Schedule hereto respectively

NOW THIS DEED WITNESSETH as follows:—

Surrender of life estate.

1. IN pursuance of the said agreement and in consideration of the conveyance in exchange hereinafter made by the Remainderman the Tenant for Life AS BENEFICIAL OWNER hereby assigns and surrenders unto the Remainderman ALL the beneficial right and interest of him the Tenant for Life to which he is entitled as aforesaid during his life in the said lands [and capital moneys] mentioned in the First [and Second] Parts of the said Second Schedule hereto To the intent that such life estate may merge and be wholly extinguished in the equitable interest in remainder immediately expectant thereon but subject to all subsisting leases or tenancies profits à prendre easements rights and liabilities affecting the said lands.

Release of powers of charging.

2. IN further pursuance of the said Agreement and in consideration of the premises the Tenant for Life hereby releases the said lands and capital moneys mentioned in the First [and Second] Parts of the said Second Schedule and the said Third Schedule hereto respectively from his said power to charge portions for his younger children.

Conveyance of remainder.

3. IN further pursuance of the said agreement and in consideration of the surrender hereinbefore contained the Remainderman AS BENEFICIAL OWNER hereby conveys and releases unto the Tenant for Life All his estate and interest in remainder expectant on the life estate of the Tenant for Life in the lands [and capital moneys] mentioned in the First and Second Parts of the said Third Schedule hereto respectively to the intent that the life estate therein of the Tenant for Life shall merge and be extinguished in the equitable estate in remainder therein.

Declaration as to incidence of duty.

4. IT is hereby agreed and declared by and between the parties hereto that if any duties shall become payable on the death of the Tenant for Life in respect of the lands [and capital moneys] mentioned in the Second or the Third Schedule

hereto the same shall as between the parties hereto be payable out of [the capital moneys remaining subject to the trusts of the Settlement and not comprised in the said Second or Third Schedule hereto] [the said lands and capital moneys mentioned in the First and Second Parts of the said Third Schedule hereto and hereby vested absolutely in the Tenant for Life] (*b*).

IN WITNESS etc. (*c*).

THE FIRST SCHEDULE ABOVE REFERRED TO

[This will contain particulars of the Conveyances to the uses of the Settlement and the Subsidiary Vesting Deeds.]

THE SECOND SCHEDULE ABOVE REFERRED TO

First Part

Particulars of lands in which the Tenant for Life surrenders his life estate.

Second Part

Capital moneys in which the Tenant for Life surrenders his life estate.

THE THIRD SCHEDULE ABOVE REFERRED TO

First Part

Lands to be taken by the Tenant for Life.

Second Part

Capital moneys to be taken by the Tenant for Life.

(*b*) The tenant for life cannot convey the legal estate in the lands to be taken by the remainderman to the latter until he is satisfied as to the arrangements for providing for the duty: see note (*a*), *ante*, Settled Land Act, s. 8 (3) (*b*).

(*c*) If any documents of title relate to both sets of properties the tenant for life should in the conveyance of the legal estate acknowledge the right of the remainderman to the production of those retained by him.

Form 16

Clause in Settlement or Will to permit of a beneficiary whose interest is made subject to protective trusts relinquishing it in order to accelerate trusts in remainder (*a*).

(*Drafted by J. F. Turing, Solicitor.*)

NOTWITHSTANDING the protective trusts declared by clause —— hereof [or appointed by any instrument exercising a power of appointment conferred by this Settlement/Will] it shall be lawful for any person whose life or other interest in the Trust Fund is made subject to protective trusts (and whether or not such life or other interest has fallen into possession) to release surrender or relinquish the same in relation to the whole or any part of the Trust Fund in such manner as to effect an acceleration of the beneficial interest of any person absolutely or contingently entitled in remainder to the capital or income of the same and such release surrender or relinquishment shall be as fully effective as though the said protective trusts had not been

(*a*) The purpose of this form is to meet the difficulty commonly encountered when a beneficiary wishes to relinquish his or her interest and is prevented from doing so by protective trusts. It is assumed that the protective trusts have been declared by reference to or adaptation of s. 33 of the Trustee Act, 1925.

The subject has acquired more importance since the House of Lords decision in *Chapman* v. *Chapman* [1954] A.C. 429, which makes it unpromising as a general rule to look to the court for assistance in piloting death duty schemes.

It is an anomalous feature of the present law that a married woman whose interest was originally restrained from anticipation is now free to deal with her interest under the Married Women (Restraint Upon Anticipation) Act, 1949, but her husband, if his interest was made subject to protective trusts, is still fettered by them.

The words in square brackets should be omitted if the Will or Settlement confers no powers of appointment. The proviso, when appropriate, is of course optional. It is intended to give the appointors more "elbow-room" and may be helpful where, for example, parents have reason to fear that a daughter might by means of a surrender accelerate trusts in favour of an improvident husband.

The form is not appropriate to discretionary trusts. In Settlements or Wills which define a "discretionary class," it is usually quite simple to include a proviso to permit of any person of full age, who would otherwise be a member of the class, disclaiming his interest by deed.

declared [or appointed] [PROVIDED THAT by any instrument exercising such a power of appointment the Appointor may direct that this clause shall not apply to any life or other interest thereby appointed and made subject to protective trusts and if such a direction shall be made this clause shall not apply to that life or other interest].

Form 17

Clauses to be inserted in Settlements in regard to Compensation etc. under the Town and Country Planning Acts, 1947 to 1954 (*a*).

1. Capital [money or money deemed to be capital money] may be raised and applied in payment of the costs of and incidental to (1) applications for planning permission for any development authorised by the Settlement or otherwise

(2) applications for any payment under Part I of the Town and Country Planning Act, 1954, or for the payment of any other compensation whatsoever under the statutes for the time being in force relating to planning control or any apportionment

(*a*) The Precedent will apply to a strict settlement if the words in square brackets are used. Neither the Acts nor the Regulations expressly provide whether payments under Part I of the Town and Country Planning Act, 1954, or compensation under Parts II, IV or V are to be treated as capital: though under the Town and Country Planning (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955, No. 38), para. 10, Part I payments and Compensation under Parts II and V are to be paid to the trustees of the settlement. Compensation for future revocation or modification of permission is under Part IV payable to the person who has incurred the expenditure rendered abortive by the revocation or modification. This may be the tenant for life under a strict settlement, or the trustees, if the works were an improvement paid for out of capital money. Compensation for refusal of the right to fell trees subject to a tree preservation order or conditions attached to consent would usually be payable to the tenant for life, notwithstanding if they are timber he would not be entitled to the whole proceeds of sale. The same applies generally to refusal of permission or conditions attached to permission to alter buildings subject to a building preservation order. But there are exceptions; and it may be more equitable to give the trustees a discretion as to application of the compensation, as in the words in brackets in cl. 2 of the above Precedent. As to the cost of maintaining such buildings, see Town and Country Planning Act, 1947, s. 29 (7): as to power to raise money for repayment of compensation: Town and Country Planning Act, 1954, s. 66 (2).

in regard to such payment or compensation or any appeal from or against any finding order or decision in relation thereto

(3) opposing or making objections or representations in regard to any proposed orders affecting any land subject to the trusts hereof or prosecuting an appeal therefrom

(4) complying with any statute statutory instrument order or regulation relating to planning control or any direction or requirement thereunder.

2. All payments under Part I of the Town and Country Planning Act, 1954, and all other compensation whatsoever under that Act or the Town and Country Planning Act, 1947, or any other Statute for the time being in force relating to planning control shall be treated as capital [money for all purposes] [unless such compensation is paid to the tenant for life or person having the powers of a tenant for life and the loss damage or expenditure which is the subject of the compensation was in the trustees' opinion incurred wholly or mainly by him in which case it shall be received by him for his own benefit and the trustees shall not be personally liable for applying or permitting any such compensation to be applied wholly as capital or income or apportioning the same between capital and income as they think fit but this provision is without prejudice to the right of any person interested to apply to the court to determine how such compensation shall be dealt with].

Form 18

Declaration of Trust by a Father of Half Share in Freeholds for his Son on his Marriage (*a*).

THIS DECLARATION OF TRUST is made the —— day of —— 19— BY A of etc. (hereinafter called the Father). Parties.

(*a*) The stamp duty will be 10s.; Finance (1909–10) Act, 1910, s. 59. The deed is neither a voluntary conveyance, nor a settlement for the purpose of the Stamp Acts, as it relates to land. No estate duty will be payable on the father's death if he survives the marriage. Under the above Precedent the father will retain the control of the management of the property, though a second trustee will have to be appointed if it is desired to sell or execute a legal mortgage. Alternatively, to avoid this, the property may be conveyed by the father to himself and his son on trust for sale.

Recitals: seisin;

WHEREAS:—

(1) The Father is seised in fee simple in possession free from incumbrances of the property hereinafter mentioned.

agreement to settle.

(2) A marriage has been arranged and is intended shortly to be solemnised between —— (who is the son of the Father and is hereinafter called the Son) and —— and upon the treaty for the said marriage it was agreed that the Father should make such provision for the Son as is hereinafter contained.

NOW THIS DEED made in pursuance of the said agreement and in consideration of the said intended marriage WITNESSETH and it is hereby agreed and declared as follows:—

Declaration of Trust.

1. THE Father hereby declares that he will henceforth stand possessed of the freehold property mentioned in the Schedule hereto UPON TRUST to sell the same and to stand possessed of the net proceeds of sale after payment of costs and of the net rents and profits of such part of the said property as shall for the time being remain unsold after payment of outgoings IN TRUST for himself until the said intended marriage and after the solemnisation thereof IN TRUST for himself and the Son as tenants in common in equal shares.

Powers of Trustees.

2. Pending the sale of the whole of the said freehold property pursuant to the trust for sale hereinbefore declared (but subject to the prohibition in the Law of Property Act of the payment of capital money to a sole trustee) the trustees for sale hereof for the time being shall during the joint lives of the Father and the Son and the life of the survivor of them and twenty-one years after the death of such survivor have the same full and unrestricted power of mortgaging and leasing the said property or any part thereof as if they were a sole absolute owner thereof And may in relation to the proceeds of sale exercise the power of appropriation conferred by section forty-one of the Administration of Estates Act, 1925, without any of the consents made requisite for the exercise of such power by personal representatives.

IN WITNESS *etc.*

The Schedule above referred to.

Form 19

Articles of Partnership between two Solicitors. Power for the Senior Partner to introduce a Son and provisions for payment of annuities to the Partners' widows (a).

(Drafted by Donald C. L. Cree, of Lincoln's Inn.)

THIS DEED OF PARTNERSHIP is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Senior Partner) of the one part and B of etc. (hereinafter called the Junior Partner) of the other part

WHEREAS:— Recitals:

(1) The Senior Partner has for many years been engaged in practice as a Solicitor at —— and holds various offices of profit and appointments as to the practice;

(2) The Senior Partner has agreed to take the Junior Partner into partnership with him in the said business for the period and upon the terms hereinafter mentioned agreement for partnership.

NOW THIS DEED WITNESSETH that the Senior Partner and the Junior Partner hereby mutually covenant and agree as follows:—

1. THE Senior Partner and the Junior Partner will become and remain partners in the profession or business of Solicitors in continuation of the business carried on for many years by the Senior Partner from the —— day of —— 19— during their joint lives under the style or firm of "A and B" subject nevertheless to determination as hereinafter provided. Agreement for partnership.

2. THE firm shall be registered under the Registration of Business Names Act, 1916, in the manner and within the time directed by that Act, and if at any time any change is made or occurs in the particulars required to be furnished for the purpose of such registration a statement specifying the nature and date of such change and signed by all the partners shall forthwith be furnished to the Registrar in compliance with section 6 of the same Act. Registration.

(a) *Ad valorem* stamp duty will, it seems, be payable in respect of the annuities and the stamp should be adjudicated.

Certificate of Registration.

3. THE Certificate of Registration of the Firm shall be kept exhibited in a conspicuous position upon the business premises in compliance with section 11 of the Registration of Business Names Act, 1916; and the names of the partners shall in compliance with section 18 of the same Act be written or printed on all letters and other stationery of the Firm on or in which the firm name appears.

Place of business.

4. THE partnership shall be carried on at No. — —— Street —— the property of the Senior Partner who shall grant to the partners a full repairing lease for a term of twenty-one years from the commencement of the partnership at the yearly rental of £—— for the first seven years £—— for the second seven years and £—— for the remaining seven years of the said term, such rent to be payable on the usual quarter days the first payment (being a proportion from the —— day of —— 19—) to be on the —— day of —— next. The partners shall in such lease covenant to pay all outgoings of every kind except insurance of the premises and Schedule A tax and the lease shall contain a proviso that the lease may be terminated by either partner at any time on the termination of the partnership by notice or otherwise.

Assets.

5. EXCEPT certain articles set out in a list and signed by the partners and all undrawn profits up to the commencement of the partnership which shall remain the separate property of the Senior Partner the goodwill and all other assets of the business now belonging to the Senior Partner shall belong to the partners in the following shares and proportions namely two-thirds to the Senior Partner and one-third to the Junior Partner.

Capital.

6. THE capital of the firm shall consist of such sum or sums of money as shall from time to time be required for carrying on the partnership with advantage and shall be contributable by and credited in the books of the firm as to two-thirds by the Senior Partner and as to one-third by the Junior Partner or in such shares and proportions as the partners may from time to time think necessary. No interest on capital shall be credited to the partners.

[7. FOR the purposes of providing sufficient working capital at the commencement of the partnership the Senior Partner shall advance on loan to the partners the sum of £1,000 free of interest which sum shall be repayable to the Senior Partner at any time hereafter on his giving six months' notice in writing to the partners requiring repayment of such loan] (*b*). Loan by Senior Partner.

8. THE outgoings expenses and losses incurred by the partners including the expenses of and incidental to attendances upon clients or otherwise by either partner on behalf of the firm shall in balancing the accounts of the firm be charged against revenue and losses and shall be borne or paid by the partners in the shares to which they are entitled to the net profits. Outgoings.

9. THE Senior Partner shall not be under any obligation to account for any Directors fees and allowances he may now or hereafter receive [or any other fees emoluments and benefits received by him in respect of any other office of profit or appointment] but the same shall belong to him for his own use and benefit but the Junior Partner shall if required by the Senior Partner bring into the partnership account any fees or emoluments he may earn or receive for work done by him PROVIDED that legacies from clients shall not be brought into account by either partner. Emoluments.

10. THE partners shall be entitled to the net profits of the partnership in the shares following that is to say the Senior Partner as to two-thirds and the Junior Partner as to one-third. PROVIDED always that in the event of the net profits in any year being less than £3,000 then and in that event the Junior Partner shall be entitled to draw out of such net profits the sum of £1,000 it being the intention of the partners that the Junior Partner's drawings shall be not less than £1,000 per annum payable monthly and the Senior Partner shall be entitled to draw out the balance of such income. Profits.

11. (i) UPON the death of the Senior Partner or the Junior Partner the goodwill and assets of the partnership shall vest in the survivor of them EXCEPTING any undrawn profits or capital standing to the credit of such deceased partner in the Provisions for death.

(*b*) This clause will only be required in special circumstances.

books of account of the partnership PROVIDED THAT should the Senior Partner have transferred or bequeathed any part of his share and interest in the partnership and the capital and profits thereof under the provisions of any of the sub-clauses (ii) (iv) or (v) hereof and should the Senior Partner predecease the Junior Partner then there shall pass to the Junior Partner by survivorship such part only of the aforesaid share and interest of the Senior Partner as has not been disposed of under the provisions of any of the above-mentioned sub-clauses hereof.

Power to introduce son.

(ii) The Senior Partner may during the subsistence of the partnership introduce his son C into the partnership and may transfer to the said C such part of his share and interest in the partnership and the capital and profits thereof as does not exceed one moiety of the whole of the partnership and the capital and profits thereof PROVIDING the said C has at the time of such introduction and transference become duly admitted as a Solicitor.

(iii) Upon the said C being introduced into the partnership under the provisions of sub-clause (ii) hereof or nominated to succeed the Senior Partner under the provisions of sub-clause (v) hereof he shall on executing a proper Deed of Accession defining his rights and liabilities as a partner, become a partner accordingly, and be in a similar position in that respect as the Junior Partner, with such variations (if any) as the case may require.

(iv) In the event of the said C being introduced into the partnership during the lifetime of the Senior Partner and the Senior Partner transferring to the said C less than that part of the aforesaid share and interest of the Senior Partner as is mentioned in sub-clause (ii) hereof then the Senior Partner may by will or codicil devise and bequeath unto the said C such further part of the aforesaid share and interest of the Senior Partner does not exceed the limit laid down by the aforesaid sub-clause (ii) hereof.

(v) In the event of the Senior Partner predeceasing the Junior Partner without having introduced the said C into the partnership and without having transferred to him any part

of the aforesaid share and interest of the Senior Partner therein the Senior Partner may by will or codicil nominate the said C to succeed him the Senior Partner as a partner to such part of the aforesaid share and interest of the Senior Partner in the partnership and the capital and profits thereof as does not exceed the limit laid down in sub-clause (ii) hereof.

(vi) In the event of the Senior Partner predeceasing the Junior Partner during the subsistence of the partnership without having introduced the said C into the partnership and without having transferred to him any part of the aforesaid share and interest of the Senior Partner therein and also without having by will or codicil nominated the said C to succeed him as aforesaid then in the event of the said C having become duly admitted as a Solicitor at the time of the death of the Senior Partner or within 12 months thereafter the Junior Partner will transfer and assign to the said C such part of the aforesaid share and interest in the partnership which will pass to the Junior Partner by survivorship as may be necessary so that the Junior Partner and the said C shall become equally entitled to the capital and profits of the partnership (excluding [the aforesaid loan of £1,000 referred to in Clause 7 hereof or so much thereof as shall remain due to the Senior Partner at the time of his death and also excluding] the undrawn profits).

Restriction on practice.

12. IN the event of the Junior Partner for any reason whatsoever ceasing to be a partner of the Senior Partner while the Senior Partner is carrying on practice as a Solicitor at —— the Junior Partner shall not for a term of five years from his ceasing to be a partner carry on or engage or be concerned or interested directly or indirectly in the business of a Solicitor within ten miles of the General Post Office at —— (*c*).

Previous book debts.

13. (i) ANY moneys received from clients in respect of work done previously to the commencement of the partnership shall belong to and be paid to the Senior Partner for his own separate use.

(*c*) The radius must not extend beyond that necessary to protect the practice.

(ii) The Senior Partner shall bear all outgoings and liabilities up to the commencement of the partnership.

(iii) The partnership shall so far as may be necessary assist the Senior Partner to collect any moneys owing or which shall become owing in respect of work done as referred to in sub-clause (i) of this clause.

Bankers.

14. The partnership Bankers shall be the —— Bank Limited or such other Bankers as the partners shall from time to time determine and all moneys and securities belonging to the firm except such moneys as are required for current expenses shall be paid into and deposited with the said Bank to the credit of the partnership account. All cheques on such account shall be drawn in the firm name and may be so drawn by either partner.

Clients moneys.

15. All moneys and securities for money received by the partners or either of them on behalf of or as the property of a client or third person except such of the same as shall be permitted under the Rules applicable to Solicitors to be otherwise dealt with shall forthwith be paid or delivered to such client or third person or paid into or deposited with the said Bank to an account separate and distinct from any account relating to the property of the partnership and known as Clients' account.

General account.

16. On the 30th September and the 31st March in each year a general account shall be taken of the assets and liabilities of the partnership and of all the dealings and transactions of the partnership during the then preceding six months or one year (or in the case of the first of such accounts since the commencement of the partnership) and of all matters and things usually comprehended in accounts of a like business and required by the Law Society and in taking such account a just valuation shall be made of all items requiring valuation. Such general account shall be prepared and audited by Messrs. ——, Chartered Accountants or by a competent Chartered Accountant to be from time to time agreed upon by the partners and shall be entered in a book which shall be signed by both the partners and when so signed shall be binding on them save that if any manifest error shall be found therein and signified by either

partner to the other partner within three calendar months after such signature the same shall be rectified.

Duties of partners.

17. THE Junior Partner shall at all times during the partnership devote the whole of his time and attention to the partnership business and diligently and faithfully employ himself therein and carry on the same for the greatest advantage of the partnership and if at any time the Junior Partner shall be away from business by reason of ill health or otherwise for a period exceeding six months the Senior Partner may by notice in writing cause the partnership to be determined at any time after the expiration of such six months. The Junior Partner shall be entitled to three weeks holiday in addition to the usual Bank Holidays. The Senior Partner shall devote such time and attention to the partnership business as he shall in his discretion consider necessary.

Pupils.

18. NEITHER partner shall take an Articled Pupil without the consent of the other partner and the fees payable in respect of any such pupil so taken shall belong to the partner taking the Pupil and shall not accrue to the Partnership.

Provision for death or bankruptcy.

19. IF either partner shall die or become bankrupt or shall give notice to determine the partnership under the power in that behalf herein contained or if the partnership shall be determined as against either partner by notice properly given to him as herein provided all deeds drafts and other papers relating to the business of the firm shall (subject to the claims of any clients to whom the same may belong) remain in the hands of or be delivered to the surviving partner or the partner giving such notice.

Power to determine.

20. [EITHER partner may determine the partnership at any time by notice expiring on the 31st March in any year giving not less than six calendar months previous notice in writing to the other partner of his intention in that behalf and at the expiration of such notice the partnership shall determine accordingly.]

Vesting of assets on determination.

21. IN the event of the partnership being determined by notice under clause 17 or 20 hereof or if the Senior Partner shall serve a notice under clause 22 then at the expiration of such notice all the goodwill and assets of the partnership shall thereupon

vest in the Senior Partner for his own use and benefit without prejudice to the claims of both partners to the undistributed profits and capital of the partnership.

Power to expel partner.

22. IF either partner shall at any time during the continuance of the partnership commit or be guilty of any breach of any of the provisions or stipulations herein contained or any other flagrant breach of his duties as a partner or shall fail to account for and pay over or refund any moneys for which he is accountable to the partnership within fourteen days after being required so to do in writing by any other partner or shall act in any other respect contrary to the good faith which ought to be observed between partners or shall suffer his share of the partnership property to be charged for his separate debt or shall become bankrupt enter into any composition or arrangement with or for the benefit of his creditors then and in any such case the other partner may by notice in writing expel the partner so in default as aforesaid from the firm and publish a notice of dissolution of the partnership in the name of and as against such partner whereupon the partnership shall immediately cease and determine accordingly so far as regards such partner without prejudice to the remedies of the other partner for any antecedent breach of any of the stipulations or agreements aforesaid PROVIDED that if any question shall arise as to whether a case has happened to authorise the exercise of this power such question shall be referred to arbitration in manner hereinafter provided.

Insurance.

23. A POLICY of insurance against claims for negligence in the conduct of the clients' business in any year for a sum of £—— shall be taken out and maintained by the firm and the costs of so doing shall be charged against revenue. Any claims not covered by such policy shall be treated as losses of the business.

Books of account.

24. PROPER books of account shall be kept by the partners and entries made therein of all such matters, transactions, and things as are usually entered in books of account kept by persons engaged in concerns of a similar nature, including particulars of all attendances and professional business transacted by each partner, and of all such names, times and places as may be

necessary or useful for the manifestation of the partnership business. The said books of account and other books and all deeds, securities, letters, papers and documents belonging or relating to the partnership shall be kept at the office of the partnership and each partner shall at all reasonable times have free access to examine and copy the same.

Just and faithful clause.

25. EACH partner shall be just and faithful to the other partners or partner in all transactions relating to the business of the partnership and shall give a true account of the same to them when and so often as the same shall be reasonably required.

Partners to give information.

26. EACH partner shall upon every reasonable request inform the other partners or partner of all letters, accounts, writings, and other things which shall come to his hands or knowledge concerning the business of the partnership.

To pay separate debts.

27. EACH partner shall punctually pay and discharge his present and future separate debts and engagements and shall at all times keep indemnified the other partner and or his representatives and the property of the partnership against the same and all actions, proceedings, costs, claims and demands in respect thereof.

Restrictions on partners.

28. No partner without the consent in writing of the other partner:—

(i) Compound release or discharge any debt which shall be due or owing to the partnership without receiving the full amount thereof.

(ii) Become bail, surety or security for any person or corporation (or subscribe any policy of insurance) or do or knowingly suffer anything whereby the property of the partnership may be seized, attached or taken in execution.

(iii) Assign or mortgage his share or interest in the partnership.

(iv) Draw accept or sign any bill of exchange or promissory note or contract any debt on account of the partnership or employ any of the moneys or effects thereof or in

any manner pledge the credit thereof except in the usual and regular course of business.

(v) Lend money or give credit to or have any dealings on behalf of the partnership with any person or company whom the other partners or partner shall previously have forbidden him to trust or deal with.

(vi) Buy order or contract for any real or leasehold property or for any goods or articles for the use of the firm exceeding the value of £——.

(vii) Hire or except in case of gross misconduct dismiss any clerk or person in the employment of the firm or change the London Agents of the Firm.

Not to lend money.

29. NEITHER partner shall lend any money belonging to or give any credit on behalf of the firm in any case in which the other shall have forbidden him to do so, nor shall he undertake any professional business of any kind on behalf of any person or company (other than himself or his own wife or children or his, her or their trustees) after having been required by the other not to do so.

Costs for family.

30. IN the event of the firm or either partner acting as Solicitor for or on behalf of either partner or his wife or children or their or his or her trustees such business shall not be charged for except as to payments out of pocket and except as to costs recovered against other parties in any successful action or defence or other proceedings or out of any fund or estate to which such action or proceeding shall relate which said costs shall be carried to the credit of the partnership and be dealt with as partnership profits.

Trustee business.

31. IF either partner shall be a trustee in any matter or business and shall not be entitled to act as Solicitor in respect of the same either by himself or his firm and be paid as Solicitor out of the trust estate or otherwise the other partner may act as such Solicitor on his own account and the partner who is such trustee shall not be entitled to any share in the profit costs arising out of such business or matter.

Annuity to widows of partners.

32. THE Junior Partner hereby covenants with the Senior Partner that in the event of the Senior Partner predeceasing

the Junior Partner during the subsistence of the partnership the Junior Partner will pay to Mrs. —— the wife of the Senior Partner if she shall be living at the death of the Senior Partner, an annuity of £—— per annum for the remainder of her life and such annuity shall be deemed to accrue from day to day and shall be paid to the said Mrs. —— by quarterly instalments payable on the usual quarter days the first of such instalments to be made on the first Quarter Day after the death of the Senior Partner AND the Junior Partner hereby covenants with the Senior Partner that he will procure that such annuity shall be paid exclusively out of income brought into charge for income tax AND the Junior Partner hereby charges all his share and interest and any further share and interest which he may hereafter acquire in the profits and assets of the partnership with the payment of the aforesaid annuity (*d*).

33. THE Senior Partner hereby covenants with the Junior Partner that in the event of the Junior Partner predeceasing the Senior Partner during the subsistence of the partnership the Senior Partner will pay to Mrs. ——, the wife of the Junior Partner an annuity of £—— for a period of five years from the death of the Junior Partner, should she so long live and such annuity shall be deemed to accrue from day to day and shall be paid to the said Mrs. —— by quarterly instalments payable on the usual Quarter Days the first of such instalments to be made on the first Quarter Day after the death of the Junior Partner and the last of such instalments to be made on the first Quarter Day after the fifth anniversary of the death of the Junior Partner AND the Senior Partner hereby covenants with the Junior Partner that he will procure that such annuity shall be paid exclusively out of income brought into charge for income tax AND the Senior Partner hereby charges all his share and interest and any further share and interest which he may hereafter acquire in the profits and assets of the partnership with the payment of the aforesaid annuity.

34. ON the determination or dissolution of the partnership Notice of dissolution.

(*d*) The annuity may, if preferred, be made payable to the widow of the deceased partner in general terms.

either partner or his legal personal representative shall have power to sign in the name of the firm and publish in the London Gazette a proper notice of the dissolution of the partnership.

Notices.

35. ANY notice hereby authorised or required to be given to the said partners or any of them shall be sufficiently given by leaving the same addressed to them or him at the office or principal place of business of the said firm.

Arbitration clause.

36. IF during the continuation of the partnership or at any time afterwards any dispute difference or question shall arise between the said partners or either of them or their or any of their representatives touching the partnership or the accounts or transactions thereof or the dissolution or winding up thereof or the construction, meaning or effect of this deed or anything herein contained or the rights and liabilities of the partners or their representatives under this deed or otherwise in relation to the premises then every such dispute difference or question shall be referred to two arbitrators one to be appointed by each party and their umpire pursuant to the Arbitration Act, 1950, or any statutory modification or re-enactment thereof for the time being in force.

IN WITNESS, etc.

Form 20

Deed of Accession by which the Senior Partner's Son is introduced under the powers in the last Precedent.

(*Drafted by Donald C. L. Cree, of Lincoln's Inn.*)

THIS DEED OF ACCESSION is made the —— day of —— 19— BETWEEN A of etc. (hereinafter called the Senior Partner) and B of etc. (hereinafter called the Junior Partner) (hereinafter collectively referred to as the Old Partners) of the one part and C of etc. (hereinafter called the New Partner) of the other part

WHEREAS:— Recitals:

(1) By a Deed of Partnership (hereinafter called the Articles) articles; dated the —— day of —— 19— and made between the Senior Partner of the one part and the Junior Partner of the other part the Senior Partner and the Junior Partner entered into mutual covenants amongst other things that they would become and remain partners as Solicitors under the firm name of A and B during their joint lives subject to determination as therein provided and it was provided that the capital should be held as to two-thirds by the Senior Partner and as to the remaining one-third by the Junior Partner and power was given to the Senior Partner to introduce his son the New Partner and to transfer his capital or part thereof to the New Partner.

(2) The Senior Partner and the Junior Partner have carried practice; on such profession as Solicitors up to the date hereof according to the provisions of the Articles.

(3) In pursuance of the provisions contained in the Articles desire to introduce son. the Senior Partner is desirous of introducing the New Partner as a partner into the said firm during the joint lives of the Old Partners and the New Partner or the survivors of them and assigning to him a one half part of the share of him the Senior Partner in the partnership but subject to the restrictions and provisions hereinafter contained.

NOW THIS DEED made in pursuance of the said provisions contained in the Articles WITNESSETH and the Old Partners and

the New Partner hereby mutually covenant and agree as follows:—

Introduction of son.

1. THE Senior Partner with the consent (hereby testified) of the Junior Partner doth hereby introduce the New Partner as a partner into the said firm upon the terms and subject to the restrictions and provisions hereinafter contained.

Assignment of share.

2. THE Senior Partner hereby assigns unto the New Partner one equal half part of the share of him the Senior Partner in the capital assets goodwill and profits of the firm [including, the loan of £1,000 mentioned in clause 7 of the Articles (*a*)] as from the —— day of —— 19—, TO HOLD the same UNTO the New Partner absolutely subject as hereinafter mentioned.

New partnership.

3. THE Old Partners and the New Partner will as from the —— day of —— 19— be and remain partners as Solicitors for the remainder of their joint lives and the lives of the survivors upon the terms and subject to the agreements and provisions contained in the Articles with such variations as are rendered necessary by the introduction of the New Partner as a partner and the assignment to him of a half part of the share of the Senior Partner as aforesaid and the provisions hereinafter contained and will observe and perform the said agreements and provisions with such variations as aforesaid in the same manner (as far as circumstances will admit) as if the New Partner had originally been a party to the Articles and the provisions of these presents had been embodied therein.

Registration.

4. THE statement required to be furnished by section 6 of the Registration of Business Names Act, 1916, in consequence of the admission of the New Partner into the firm shall be furnished forthwith.

Provision for duty.

5. THE Senior Partner hereby covenants with the Junior Partner and the New Partner that if the Senior Partner shall die within five years from the date of this Deed and if at the time of his death the Junior Partner or the New Partner or either of them shall be carrying on the firm pursuant to the Articles and this Deed or pursuant to the same as modified by

(*a*) See note (*b*) to last Precedent.

any power contained in the Articles the Executors or Administrators of the Senior Partner will pay to the Junior Partner and the New Partner or either of them the amount of any Estate duty and interest thereon then payable by the Junior Partner and the New Partner or either of them in respect of the share hereby assigned to the New Partner (*b*).

6. THE following clauses of the Articles shall be varied or modified in manner following namely:— Variation of Articles.

(1) *Clause 5*

The goodwill and all the assets of the firm shall belong to the parties hereto in equal shares.

(2) *Clause 7*

The New Partner shall be equally liable with the Old Partners for the repayment of the loan of £1,000 with interest.

(3) *Clause 9*

The New Partner shall carry out also the obligations imposed on the Junior Partner under this clause if so required by the Senior Partner.

(4) *Clause 10*

The parties hereto shall be entitled to the net profits in equal shares PROVIDED ALWAYS that out of such profits the Junior Partner shall be entitled to draw the sum of £1,000 per annum and the New Partner the sum of £800 per annum (diminishing if necessary pro rata) as a first charge on the said net profits of the partnership and subject to such sums of £1,000 and £800 being brought into hotchpot the partners shall be entitled to the net profits in equal shares and such sum of £1,000 and £800 shall be paid by monthly instalments.

(5) *Clause 11*

Clause 11 shall be deleted and the following clause substituted.

Clause 11

"Upon the death of a partner the goodwill and assets of the partnership shall vest in the survivors equally or

(*b*) Estate duty will be payable on the death of the senior partner within five years as on a voluntary conveyance of his share, calculated on its market value—*Att.-Gen.* v. *Bowden* [1912] 1 K.B. 539; *Lord Strathcona* v. *I. R. C.*, 1929 S.C. 800.

survivor of them except any undrawn profits or capital standing to the credit of such deceased partner in the books of account of the partnership. Providing that if the Senior Partner predecease either of the other partners there shall pass to them or him as the case may be such part only of the Senior Partner's share and interest as has not been disposed of by him by this deed or under sub-clause 11 (iv) of the Articles. If at any time when there are three partners a partner shall die or be expelled or become bankrupt the assets shall vest in the other partners as above and the partnership shall be carried on between the other partners on the terms of the Articles and they shall assume the liabilities of the firm."

(6) *Clauses 12 and 17*

Clauses 12 and 17 shall be read and construed as if the obligations imposed on the Junior Partner by these clauses had also been imposed on the New Partner.

(7) *Clauses 32 and 33*

Clauses 32 and 33 shall be deleted and the following clause substituted.

(1) The Junior Partner and the New Partner respectively covenant with the Senior Partner that in the event of the Senior Partner predeceasing either of them during the subsistence of the partnership they will pay to Mrs. —— the wife of the Senior Partner if she shall be living at the death of the Senior Partner, an annuity of £— per annum, for the remainder of her life and such annuity shall be deemed to accrue from day to day and shall be paid to the said Mrs. —— by quarterly instalments, payable on the usual Quarter Days, the first of such instalments to be made on the first Quarter Day after the death of the Senior Partner AND the Junior Partner and the New Partner hereby covenant with the Senior Partner that they will procure that such annuity shall be paid exclusively out of income brought into charge for income tax AND the Junior Partner and the New Partner hereby charge all their respective shares and interests and any further share and interest which they may hereafter acquire in the profits and assets of the partnership with the payment of the aforesaid annuity.

(2) The Senior Partner and the New Partner hereby covenant with the Junior Partner that in the event of the Junior Partner predeceasing the Senior Partner or the New Partner during the subsistence of the partnership the Senior Partner and the New Partner will pay to Mrs. —— the wife of the Junior Partner an annuity of £—— for a period of five years from the death of the Junior Partner should she so long live and such annuity shall be deemed to accrue from day to day and shall be paid to the said Mrs —— by quarterly instalments payable on the usual Quarter Days, the first of such instalments to be made on the first Quarter Day after the death of the Junior Partner and the last of such instalments to be made on the first Quarter Day after the fifth anniversary of the death of the Junior Partner AND the Senior Partner and the New Partner hereby covenant with the Junior Partner that they will procure that such annuity shall be paid exclusively out of income brought into charge for income tax AND the Senior Partner and the New Partner hereby respectively charge all their share and interest and any further share and interest which they may hereafter acquire in the profits and assets of the partnership with the payment of the aforesaid annuity.

(3) The Senior Partner and the Junior Partner hereby respectively covenant with the New Partner that in the event of the New Partner predeceasing either the Senior Partner or the Junior Partner leaving a wife him surviving then and in that event the Senior Partner and the Junior Partner will pay to such widow of the New Partner an annuity of £— for a period of five years from the death of the New Partner should she so long live and such annuity shall be deemed to accrue from day to day and shall be paid to such widow by quarterly instalments the first of such instalments to be made on the first Quarter Day after the death of the New Partner and the last of such instalments to be made on the first Quarter Day after the fifth anniversary of the death of the New Partner and the Senior Partner and the Junior Partner hereby respectively covenant with the New Partner that they will procure that such annuity shall be paid exclusively out of

income brought into charge for income tax and the Senior Partner and the Junior Partner hereby respectively charge all their respective shares and interests and any further share or interest which they may hereafter acquire in the profits and assets of the partnership with the payment of the aforesaid annuity (*c*).

Lease of premises.

7. BY a Lease dated the —— day of —— 19— No. — —— Street —— was demised to the Old Partners for the term of 21 years from the —— day of —— 19— by the Senior Partner at the rent and subject to the conditions in the said Lease mentioned the Old Partners hereby agree that they will hold such lease for the benefit of all the Partners and the New Partner hereby agrees and covenants with the Old Partners that he will be equally liable with them for carrying out the terms of the said Lease as if he had been also a party to such lease as Lessee.

[8. The Costs of and incidental to the preparation execution and stamping of this Deed shall be borne by the Senior Partner.]

[9. Statement as to value if required.]

(*c*) If desired it may be provided that if the new partner becomes entitled to a further part of the senior partner's share, the annuity shall be proportionately increased.

CORRIGENDA

The following errors of reference in the Noter-up of the Precedents contained in Volumes 1–16 published in our last issue have been brought to our attention:

Page 723: The reference to Form 13 should appear immediately before the paragraph commencing "The intention of the testator."

Page 724: The Finance Act referred to is the Act of 1947.

Page 725: On the penultimate line footnote (*f*) should read (*h*).

Page 727: Form 42. Footnote (*p*) should read (*h*).

Page 728: Volume 6, Form 20. Clause 3 (ii) should read 4 (ii).

Page 733: The note on recital (3) appearing under Form 9 in fact relates to Form 10.

Page 736: Form 29. The reference to page 282 should be to page 382.

THE CONVEYANCER, VOLUMES 1-16

NOTANDA AND ADDENDA

Prepared by

ERNEST H. SCAMELL, *Barrister-at-Law*

N.B.—War-time Forms which served merely temporary purposes and have become redundant have not been noted up.

Volume 1.

Form 1. The value of clause 13 of this Form giving a power to trustees of a settlement to determine the settlement is vividly illustrated by *Chapman* v. *Chapman* [1954] A.C. 429, and *Re Downshire Settled Estates* [1953] Ch. 218; and see *Re Powles* [1954] 1 W.L.R. 336.

Form 2. Footnote (*b*): and see *Bullock* v. *Lloyds Bank* [1955] 2 W.L.R. 1.

Footnote (*z*): The appropriate certificate as to value should now be added where the value of the settled property does not exceed £500, £3,000 or £3,450: Finance Act, 1947, as extended by the Finance Act, 1952. For forms, see Vol. 16, Form 9.

Clause 11, subclauses (f) and (i): Provisions similar to the provisions of these subclauses have been held to be void on the ground of repugnancy to the benefits granted by the settlement and as an attempt to oust the jurisdiction of the court: *Re Wynn* [1952] Ch. 271. For an alternative form drafted with a view to surmounting these difficulties, see Vol. 16, Form 22. As an alternative, it is conceived that the best method of conferring such plenary powers on the trustees is to make the entire trusts discretionary, but this would, of course, alter the whole nature of the instant precedent and would require careful drafting.

Form 4. Footnote (*a*): Where the demised premises constitute an agricultural holding the notice will only take effect if the provisions of section 24 of the A.H.A., 1948, are complied with. The tenant's right to serve a counter-notice is now governed by section 32 of the A.H.A., 1948, and his right to compensation for disturbance by section 34 of the Act.

Form 5. Footnote (*a*): Quaere whether *ad valorem* stamp duty would be payable. If the agreement creates a mere personal licence not creating any interest in the land, then a 6d. stamp would seem to be sufficient. See, however, the remarks of Denning L.J. in *Bendall* v. *McWhirter* [1952] 2 Q.B. 466; *Errington* v. *Errington* [1952] 1 K.B. 290. The recent decision of *Westminster Bank, Ltd.* v. *Lee* [1955] 2 All E.R. 883, does not give effect to Denning L.J.'s dicta.

Form 6. Stamp duty 1s. per £100 with a maximum of 10s.

Form 7. Clause 11 (1) (a): This clause requires modification so as to afford at least the purchaser the right to rescind in the event of planning permission being refused under the Town and Country Planning Act, 1947. The additional provisions should be framed with some particularity so as to make it quite clear what is to be deemed a refusal of permission, and whether it is to be incumbent upon the purchaser to appeal to the Minister in the event of a refusal of permission by the local planning authority before the right to rescind can be exercised.

Form 8. Clause 2 (16): The fee for registering assignments is now customarily two guineas.

This Form should be supplemented by Form 10.

Form 9. Footnote (*a*): As to when the legal estate in settled land devolves on the death of the tenant for life on his *general* personal representatives, see *Re Bridgett and Hayes' Contract* [1928] Ch. 163; *Re Thomas* [1939] Ch. 513; *Re Cugny's W. T.* [1931] 1 Ch. 305; *Re Mortifee* [1948] P. 274. In view of the difficulties the assent should recite that probate of the tenant for life's will was duly granted *without exclusion of settled land* and/or that no special grant had been obtained limited to the land formerly settled.

For a variation of this Form, see Vol. 2, Form 4.

Form 13. The value of clause (B) was illustrated in *Re Waterman's* W. T. [1952] W.N. 538.

Form 20. The income tax position in the case of such a deed of covenant is now governed by section 292 of the Income Tax Act, 1952. For similar precedents covering a variety of different situations, and as to the amount of stamp duty, see Potter & Monroe, *Tax Planning* (1954), pp. 20–35.

Volume 2.

Form 5. The demise should be expressed to be made subject to compliance by the lessee with the provisions of the Town and Country Planning Act, 1947, and where appropriate, should be accompanied by a declaration that nothing therein contained should be construed as warranting that the demised property could lawfully be used for any of the purposes mentioned without planning permission: *cf. Edler* v. *Auerbach* [1950] 1 K.B. 359.

Forms 10 and 11. For comment on these Forms, see Vol. 2, pp. 200–2 and pp. 296–9.

The intention of the testator is more likely to be accomplished if the gift in favour of the testator's wife is made conditional on her surviving him for a period of at least one month: see Vol. 3, Form 22 and note thereon.

Form 13. Clause 11: After the word "paid" on the fourth line, insert the words "free of all death duties and in priority to all other bequests and devises hereby or by any codicil hereto made": see *Re White* [1898] 2 Ch. 217; *Re Brown* [1918] W.N. 118.

Form 14. Clause 14: See the note to Vol. 2, Form 13, clause 11.

Form 15. Footnote (*a*): See now Income Tax Act, 1952, s. 397.

Form 18. Clause 10 (f) and (h): These provisions are void: see note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Clause 12: See note to Vol. 2, Form 13, clause 11.

Form 21. Footnote (*b*): See now Income Tax Act, 1952, s. 397.

Form 22. For the limits of the court's jurisdiction under section 57 of the Trustee Act, 1925, see *Re Downshire S.E.* [1953] Ch. 218; *Municipal and General Securities Co., Ltd.* v. *Lloyds Bank Ltd.* [1950] Ch. 212; *Re Pratt* [1943] 2 All E.R. 375; *Re Basden* [1943] 2 All E.R. 11; *Re Royal Society's Charitable Trusts* [1955] 3 All E.R. 14.

Footnote (*b*): All restraints upon anticipation were abolished by the Married Women (Restraint upon Anticipation) Act, 1949.

Form 25. Footnote (*a*): Stamp now 5s. for every £5 of annuity: Finance Act, 1947, s. 52.

Form 27. Such an agreement as this would now require to contain detailed provisions governing the position of the parties in relation to the obtaining of planning permission under the Town and Country Planning Act, 1947. Presumably if no provisions were inserted, the refusal of planning permission would frustrate the agreement: see *Metropolitan Water Board* v. *Dick Carr Ltd.* [1918] A.C. 119, unless, for the present purpose, an agreement for a lease is in the same position as a lease in which case see *Denman* v. *Brise* [1949] 1 K.B. 22; *Cricklewood Property Investment Trust* v. *Leighton Investment Trust* [1945] A.C. 221.

Clause 23: The Arbitration Acts, 1889 to 1934, have been consolidated in the Arbitration Act, 1950, and a reference to this Act should now be substituted for the reference to the earlier Acts.

Volume 3.

Form 1. Where it is desired to give the tenants communal and not exclusive rights over the garden land, this can be done by way of express grant so as to create legal easements: see *Re Ellenborough Park* [1955] 2 All E.R. 38. Such rights may therefore be substituted where desired for the demise of specific garden land to each tenant as in the present Form.

Clause 5 (I): It was held by Judge Forbes in *Wheeler* v. *Birmingham Chamber of Commerce Pension Funds & Trustees Co.* [1954] C.L.Y. 1803, that such a covenant as this touched and concerned the demised premises; and see also, *Williams* v. *Unit Construction Co. Ltd.* (C.A.) reported in Vol. 19, p. 262.

Form 4. As to what is a private lottery, see *Pearse* v. *Hart* [1955] 1 W.L.R. 67n.

Form 6. Stamp now 1s. for every £100 with a maximum of 10s.: Finance Act, ss. 52 and 55 (1).

Form 7. Section 1 (1) of the Leasehold Property (Repairs) Act, 1938, has been amended by section 51 (1) of the Landlord and Tenant Act, 1954, so that the former Act now applies with the same limit of rateable value to leases for *seven* years or more where at the date of service of the notice at least *three* years of the term remain unexpired.

Form 8. As to the circumstances when a gift conditional upon the beneficiary settling an appointed fund will render the appointment a fraud on the power, compare *Re Burton's Settlements* [1955] Ch. 82 and *Re Simpson* [1952] Ch. 412.

Form 14. The Hire-Purchase Act, 1938, has been significantly extended and amended by the Hire-Purchase Act, 1954. The 1938 Act now applies to hire-purchase agreements and credit-sale agreements where the hire-purchase price or total purchase price as the case may be, does not exceed:

(1) Where the agreement relates to livestock, the sum of £1,000;
(2) In any other case, including the case of an agreement relating to a motor-vehicle or railway wagon, *etc.*, the sum of £300.

The definition of "motor-vehicle" contained in section 21 (1) of the 1938 Act is repealed. Other amendments are contained in the 1954 Act and reference should be made thereto.

Form 20. Stamp now 1s. per £100 subject to a maximum of 10s.: Finance Act, 1947, ss. 52 and 55 (1).

Form 24. Form A: After the words "the said Act," insert "and the Coal Industry Nationalisation Act, 1946, and subsequent amending legislation" and for "Coal Commission" substitute "National Coal Board": see section 5 (1) of the Coal Industry Nationalisation Act, 1946.

Form C: See note to Form A, and for "Arbitation Act, 1889" substitute "Arbitration Act, 1950."

Form 25. For the protection of the lessor, this lease should contain a provision that nothing contained therein should be deemed to be or amount to a warranty as to the permitted use of the demised property for the purposes of the Town and Country Planning Act, 1947, or otherwise, and the lessor's obligations under Clause 1 should be made conditional upon planning permission being forthcoming.

Form 27. The credit-sale agreements to which the Hire-Purchase Act, 1938, applies have been increased in number by the Hire-Purchase Act, 1954. See note to Form 14.

Form 29. The disadvantage of the provisions contained in Clause 8 (1) for the making up of income out of capital is that income tax is payable on any capital sums so applied. For a precedent designed to secure a similar result without rendering payments of capital liable to income tax, see Potter and Monroe, *Tax Planning* (1954), Precedent No. 36, p. 272 *et seq.*

Clause 10, footnote (*f*): see also, *Jopling* v. *I. R. C.* [1940] 2 K.B. 282.

Form 30. Footnote (*a*): Since the Law Reform (Miscellaneous Provisions) Act, 1949, an infant does not *automatically* become a ward of court on proceedings being commenced for the administration of a legacy given to the infant. An order is necessary in almost every case. But see *Re R.* (*Infants*) (1951) 1 C.L.C. 4915.

Clause 3 (i): It should, perhaps, be considered whether the amount of the annuity is now representative.

Form 31. Footnote (*c*): See note to Vol. 1, Form 2, footnote (*z*).

Volume 4.

Form 23. Footnote (*a*): Stamp now 1s. per £100 with a maximum of 10s.: Finance Act, 1947, ss. 52 and 55 (1).

Form 26. The law surrounding this form has been changed, where an intestate dies after December 31, 1952, in two material respects by the Intestates' Estates Act, 1952, as follows:

(1) By section 1 of the Act, the surviving spouse's "statutory legacy" has been increased from £1,000 to £5,000 if the intestate leaves issue and from £1,000 to £20,000 if the intestate leaves no issue.

(2) Section 5 and Schedule II of the Act give the surviving spouse the right to *require* the deceased's personal representatives to exercise their power of appropriation in respect of any *matrimonial home* (as defined by the Act) owned by the deceased in or towards satisfaction of the spouse's interest in the estate; if the value of such home exceeds the spouse's interest, he or she may make up the balance with a money payment: see Vol. 16, pp. 413–9.

The present Form may still be used, subject to the appropriate amendments and additions occasioned by the above-mentioned changes in the law.

Form 27. Footnote (*a*): See now Key & Elphinstone's *Precedents* (15th ed.).

Form 28. Footnote (*a*): The Charitable Trusts (Validation) Act, 1954, validated certain gifts which took effect *before* December 16, 1954, which were imperfect charitable gifts by reason of an unwitting introduction of a non-charitable element. The present Form is unaffected.

Form 29. Footnote (*a*): For sections 191, 248 and 232 of the Companies Act, 1929, see now, sections 245, 303 and 285 of the Companies Act, 1948.

For the references in this Form to the Companies Act, 1929, substitute references to the Companies Act, 1948.

Form 30. For the references to the Companies Act, 1929, substitute references to the Companies Act, 1948.

Footnote (*a*): For section 190 of the 1929 Act, see now section 244 of the 1948 Act.

For another form, see Vol. 17, Form 18.

Form 31. Footnote (*a*): Stamp now 5s. for every £100, *etc.*; Finance Act, 1947, s. 52.

Footnote (*c*): The decision of the Court of Appeal in this case was affirmed by the House of Lords on other grounds: [1940] A.C. 613.

Form 35. It is conceived that the intention to negative the rule in *Allhusen* v. *Whittell* would be more clearly expressed if, in lieu of the words "no part of these payments being apportioned to income," there were substituted the words "and pending such payment the intermediate income, if any, shall, after providing for the payment of any interest payable on the debts, be treated as income."

Form 36. The Courts (Emergency Powers) Act, 1939, expired on October 8, 1950: Courts (Emergency Powers) (End of Emergency) Order, 1950 (No. 1647).

Form 41. Footnote (*a*), which suggests an alternative method of transfer to that dealt with by this Form, must now be read subject to the decision of *Re Cook* [1948] Ch. 212, though this may not affect the suggested alternative; see section 23 of the Law of Property Act, 1925.

Form 42. Footnote (*p*): The coal and mines formerly vested in the Coal Commission are now vested in the National Coal Board: section 5 (1) of the Coal Industry Nationalisation Act, 1946.

Form 43. Footnote (*g*): See now section 19 of the Companies Act, 1948.

Form 44. Clause 3 (2): As to whether this clause will exonerate the beneficiary from surtax, see *Re Bates* [1925] 1 Ch. 157 and *Re Hulton* [1931] 1 Ch. 77.

Form 45. The purchaser should give written notice of the assignment to each of the persons named in the Schedule: see section 136 of the Law of Property Act, 1925.

Volume 5.

Form 3. For other forms, see Vol. 7, Form 26; Vol. 8, Form 23; Vol. 18, Form 11.

Form 6. Recital (3): For the "Companies Act, 1929," substitute "Companies Act, 1948."

Form 13. Clause (D) (ii): A reference to the Intestates' Estates Act, 1952, should be included.

Form 15. Footnote (*a*): In the fourth paragraph, the word "rescind" should read "reserve."

Form 19. Footnote (*a*): See now sections 354 and 358 of the Income Tax Act, 1952.

Form 21. For a form of assignment giving effect to such an agreement, see Form 6 in the same volume.

Form 24. Footnote (*b*): Legacy duty and succession duty were abolished by the Finance Act, 1949, ss. 27 and 28.

Volume 6.

Form 15. All restraints upon anticipation were abolished by the Married Women (Restraint upon Anticipation) Act, 1949.

Form 16. Clause 9: The provisions of this clause are void: see note to Vol. 1, Form 2, Clause 11, sub-clauses (f) and (i).

Form 18. Clause 6: On the second line, the word "to" should read "or."

Form 20. Clause 3 (ii): For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 21. Clause 10: In the fifth line, for "authorised" read "requested."

Clause 11: Two weeks' holiday with pay is now usual.

Clause 17: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 26. Clause 15: See preceding note to Clause 17.

Volume 7.

Form 1. Clause 17: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 4. For the effect of the National Health Service Act, 1946, on medical partnerships and contracts of employment, see Vol. 11, p. 41 and Vol. 14, p. 38; and for a modern form, see Vol. 14, Form 6.

Form 8. As to the position in the case of *negative* covenants where the assent contains no express assignment of the benefit thereof, see *Newton Abbott Co-operative Society* v. *Williamson & Treadgold* [1952] Ch. 286.

Form 9. Clause 5: A certificate as to value will now be included where the purchase money is less than £500 or £3,000 or £3,450: Finance Act, 1952, extending the Finance Act, 1947. For forms, see Vol. 16, Form 9.

Form 13. Clause 7: The provisions of this clause are void: see note to Vol. 1, Form 2, Clause 11, sub-clauses (f) and (i).

Form 14. Footnote (*a*): For the methods of severing a joint tenancy at common law in the case of personal estate, see *Re Denny* [1947] L.J.R. 1029.

Form 15. Clause 1: Express reference should now be made to the necessity of obtaining planning permission from the Local Planning Authority.

Form 20, Part 1. Recital (iv): For "Companies Act, 1929," substitute "Companies Act, 1948."

Form 20, Part 2. Recital (ii): After "1925" on the first line there should be inserted the words "as amended by the Intestates' Estates Act, 1952."

Form 22. As to the charitable nature of the objects of this Form, see *I. R. C.* v. *Baddeley* [1955] 1 All E.R. 525; *Re Morgan* [1955] 2 All E.R. 632.

It would seem that, the objects of the present Conveyance being charitable, estate duty would be payable only on the donor's death within one year and not three (now five) as stated in footnote (*a*).

Form 26. Footnote (*g*): In *Denman* v. *Brise* [1949] 1 K.B. 22, the Court of Appeal pointed out that it is bound to hold that a lease can never be frustrated, whilst in *Cricklewood Property and Investment Trust Ltd.* v. *Leighton's Investment Trust Ltd.* [1945] A.C. 221, a majority of their Lordships held that there is no authority binding on the House of Lords that a lease can never be frustrated.

Form 27. Stamp duty on the present transaction was doubled by the Finance Act, 1947, s. 52, but the relief in the case of property of low value now applies where the amount or value of the consideration does not exceed £3,000 together with marginal relief up to £3,450: Finance Acts, 1947 and 1952. The under £500 relief still applies.

Form 28. Footnote (*a*): Stamp 5s. for every £5 of the sum payable.

Form 32. Legacy duty was abolished by the Finance Act, 1949, s. 27.

Volume 8.

Form 1. Clause 6: The Prices of Goods Act, 1939, was repealed by the Statute Law Revision Act, 1953.

Form 3. Succession duty was abolished by section 27 of the Finance Act, 1949, and with it the statutory charge therefor. This Form is therefore redundant.

Form 6. Footnote (*a*): A right to use a garden or pleasure ground has now been recognised to constitute a valid easement: see *Re Ellenborough Park* [1955] 2 All E.R. 38.

The provisions of the Landlord and Tenant Act, 1954, should be borne in mind in determining the length of the term to be granted.

The Schedule: Where applicable, appropriate restrictions should be included relating to the user of the garden.

Form 12. Footnote (*a*): And see also, *Harvell* v. *Foster* [1955] 1 W.L.R. 459.

Form 13. Footnote (*b*): See on this the decision of Upjohn J. in *Newton Abbott Co-operative Society* v. *Williamson & Treadgold* [1952] Ch. 286.

Form 21. In view of certain recent decisions, it seems clear that the trusts declared in clause 1 of this Form are not in fact charitable on the ground that the trusts lack the necessary public element: see *Baker* v. *National Trust Co. Ltd.* [1955] 3 W.L.R. 42 (P.C.); *Oppenheim* v. *Tobacco Securities Trust Co. Ltd.* [1951] A.C. 297, and cases cited therein. The decision in *Re Koettgen's W.T.* [1954] Ch. 252, however, points to a way round the effect of these cases. In that case, a trust was created for the furtherance of the commercial education of British born persons with a request that preference should be given to the employees of a particular firm but subject to a proviso that not more than 75 per cent. of the available income in any year should be applied for the benefit of the preferred beneficiaries. Upjohn J. held that the trust was a valid charitable trust. It should therefore be possible, by making suitable amendments to the present draft, to carry out the original intention. In drafting such amendments, careful study should be made of the judgment of Upjohn J. in the case cited.

Form 24. Footnote (*a*): See now section 169 of the Income Tax Act, 1952.

Volume 9.

Form 3. In the case of an unregistered title, this agreement should be registered as a land charge under the Land Charges Act, 1925. In the case of a registered title, the agreement should include an undertaking by the intending vendor to lodge the Land Certificate at the Registry for the purpose of recording a notice of the option in the Charges Register.

Form 7. This Form may be adapted to deal with the case of a revocation of an appointment coupled with a release of a power: see *Re Greaves* [1954] Ch. 434.

Form 9. Since the Intestates' Estates Act, 1952, this Form may be of use whenever the estate of the intestate is valued for probate at less than £5,000 or £20,000 according as to whether he or she died with or without surviving issue, and Recital (4) should be amended accordingly.

Form 13. Footnote (*a*): For the liability of payments out of corpus in satisfaction of an annuity to income tax, see now section 123, Case III of the Income Tax Act, 1952.

Form 14. For an alternative form, see Form 15.
In the final paragraph, after " £500," add " [£3,000] [£3,450]."

Form 15. Footnote (*a*): For " Form 15 " read " Form 14."
In the final paragraph, see note to Form 14, same paragraph.

Form 18. Footnote (*f*) (last line): For " p. 262 " read " p. 293."
Footnote (*h*): For " p. 264 " read " p. 265."
Footnote (*i*): For " p. 262 " read " pp. 263 and 270."

Forms 20, 21, 22 and 24. The Courts (Emergency Powers) Act, 1943, expired on October 8, 1950: Courts (Emergency Powers) (End of Emergency) Order, 1950 (No. 1647).

Form 26. Clause 19: The present customary registration fee reserved is 2 guineas.

Volume 10.

Form 4. Clause 2: A number of recent decisions have emphasised the difficulties of framing a condition subsequent so as not to be void for uncertainty. So far as sub-clauses (2) and (3) of clause 2 of this Form are concerned, it has been held that unless a testator sufficiently defines the state of affairs on which the trustees are to form their opinion, he will not save the condition from invalidity on the ground on uncertainty merely by making the opinion of trustees the criterion even though the declaration by the trustees of this or that opinion would be an event about which in itself there could be no uncertainty: *Re Coxen* [1948] Ch. 747; *Re Jones* [1953] Ch. 125.

Clause 8: Sub-clauses (i), (ii) and (v) of this clause are void: see note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Form 6. This Form is a duplicate of Form 13 in Volume 9 and reference may usefully be made to the rather fuller explanatory note accompanying that Form.

Form 7. In the case of persons dying after December 31, 1952, the recitals in this Form will require considerable amendment to take account of the changes in the law brought about by the Intestates' Estates Act, 1952. The respective beneficial interests of the parties are now quite different from the position as stated in the recitals.

Footnote (*d*): Succession duty was abolished by the Finance Act, 1949, s. 27, and the three-year period applicable to dispositions *inter vivos* was increased to five years by the Finance Act, 1946, s. 47.

Form 8. It is now clear that an agreement relating to maintenance such as that embodied in the present Form is not binding upon the parties unless sanctioned by the court: see *Gaisberg* v. *Storr* [1950] 1 K.B. 107; *Combe* v. *Combe* [1951] 2 K.B. 215. Accordingly, such an agreement can at best only serve as a basis for a consent application to the Divorce Court.

Form 9. Stamp now 5s. per £100 or part of £100.

Recital (3): Where the intestate died after December 31, 1952, reference should be made to the Intestates' Estates Act, 1952, and the beneficial interests of the parties stated in accordance therewith.

Form 12. So far as concerns a person dying after December 31, 1952, section 2 of the Intestates' Estates Act, 1952, repeals section 48 (1) of the Administration of Estates Act, 1925, and accordingly this Form will now only be used in the case of pre-1953 deaths. The 1952 Act, however, adds a new section 47A to the 1925 Act which provides that the surviving spouse's life interest (if any) may be redeemed for a capital sum at the election of the spouse. For forms, see Vol. 16, Forms 18 and 19.

Form 15, Part I. Clause 2: After "£500" add "[£3,000], [£3,450]": Finance Acts, 1947 and 1952.

Footnote (*a*): Section 71 of the Patents and Designs Acts, 1907 to 1946, has now become section 74 of the Patents Act, 1949.

Form 15, Part III. Clause 1 and footnote (*i*): For the reference to section 12 (1) (b) of the Patents and Designs Acts, 1907 to

1946, substitute a reference to section 17 (1) of the Patents Act, 1949.

Form 15, Part IV. Clause 1: See preceding note.

Form 15, Part V. Footnote (*m*): Section 38 of the 1907 Act has been replaced by section 57 of the Patents Act, 1949.

Footnote (*p*): See now section 57 of the Patents Act, 1949.

Clause 16: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 15, Part VI. Clause 14: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 15, Part VII. Recital B: For the reference to section 12 (1) (b) of the Patents and Designs Acts, 1907 to 1946, substitute a reference to section 17 (1) of the Patents Act, 1949.

Clause 18: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 15, Part VIII. Clause 14: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Volume 11.

Form 1. Footnote (*a*): Succession duty was abolished by the Finance Act, 1949, s. 27.

Clause 4, sub-clauses (A) and (C)(2): delete the words "succession duty."

Form 2. The prophecy contained in footnote (*b*) has proved correct in that section 2 of the Agricultural Holdings Act, 1948, has brought tenancies of the type before the court in *Land Settlement Association, Ltd.* v. *Carr* [1944] K.B. 657, within the scope of the Act. But the section in fact goes further so as to bring a letting for a fixed term of 364 days or indeed any other period less than a year within the scope of the Act. The present Form is accordingly now redundant.

Form 10. Footnote (*d*): For "Board of Education" read "Minister of Education."

Form 12. Footnote (*a*): For section 21 of the Finance Act, 1936, and section 28 of the Finance Act, 1948, see sections 397 (1) and 415 of the Income Tax Act, 1952.

Form 13. Clauses 3 and 4: For improved alternative provisions by the same draftsman, see Vol. 13, Form 25, clause 4.

Footnote (*b*): Succession duty was abolished by the Finance Act, 1949, s. 47. For section 28 (1) of the Finance Act, 1946, see now section 415 of the Income Tax Act, 1952.

Footnote (*g*): In the fifth line, for "settlor's death" read "settlement."

Footnote (*n*): For section 28 of the Finance Act, 1946, see now section 415 of the Income Tax Act, 1952.

Form 15. Footnote (*d*): See now section 415 of the Income Tax Act, 1952.

Form 18. Clause 13: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 19. Clause 20: For the principles applicable in determining the validity of such a covenant, see *Routh* v. *Jones* [1947] 1 All E.R. 758; *Re Jenkins' Deed of Partnership* [1948] W.N. 98. For a wider covenant, see Vol. 12, Form 7.

Clause 23: After "£500" read "[£3,000], [£3,450]": Finance Acts, 1947 and 1952.

Form 20, Part III. Footnotes (*b*), (*c*), (*d*), (*f*): See now Key and Elphinstone's *Precedents*, (15th ed.).

Form 20, Part IV. Footnote (*a*): For "[1893] 1 Ch. 460," read "[1896] 1 Ch. 468."

Form 26. Footnote (*a*): The Courts Emergency Powers Act, 1943, has expired.

Footnotes (*d*) and (*e*): See Exchange Control Act, 1947.

Form 27. As a result of the decision in *Re Cook* [1948] Ch. 212, it is *possible* that this Form can only be effectively used where the sole surviving joint tenant is not absolutely and beneficially entitled, *i.e.*, where there exists a tenancy in common in equity; in such a case, the tenancy in common should be recited. Where the sole surviving joint tenant is absolutely entitled both at law and in equity, then the effect of *Re Cook* is that the statutory trust for sale will have come to an end. It may be, however, that in favour of a *purchaser* the trust for sale is deemed to continue by virtue of section 23 of the Law of Property Act, 1925, so that

the present Form may continue to be of universal application: see Vol. 13, pp. 7 to 8.

Clause (3): After "£500" insert "[£3,000], [£3,450]": Finance Acts, 1947 and 1952.

Form 28. Clause 3: After "£500" insert "[£3,000], [£3,450]": Finance Acts, 1947 and 1952.

Footnote (*b*): Quaere as to the possible application of section 36 of the Law of Property Act, 1925.

Form 29. Page 282, line 9: Insert "to" before the word "shoot."

Form 30. Clause 2 (7): For section 11 of the Agricultural Holdings Act, 1923, substitute a reference to section 14 of the Agricultural Holdings Act, 1948.

Clause 5: For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Volume 12.

Form 1. The relief in respect of stamp duty on conveyances and on leases at a rent not exceeding £20 per annum has been extended by section 73 of the Finance Act, 1952, and the present position is as follows:

(1) Where the consideration or value of the property does not exceed £500 and the conveyance contains the appropriate certificate as to value, the rate of duty remains at 10s. per cent.

(2) Where the consideration or value of the property does not exceed £3,000 and the conveyance contains the appropriate certificate as to value, the rate of duty is £1 per cent.

(3) Where the consideration or value of the property does not exceed £3,450 and the conveyance contains the appropriate certificate as to value, the rate of duty is £1 10s. per cent.

Accordingly, where reference is made to the sum of £1,500 in the present forms, the sum of £3,000 or £3,450 should be substituted as the case may require.

Form 2. Clause (5): For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

As to the validity of this Form, see Vol. 16, p. 401.

Form 4. Clause 4: In so far as the trustees are not *bound* under the trusts to sell the land within the perpetuity period as

defined by the deed, it would seem that the discretion conferred upon the trustees (defined as the trustees or trustee for the time being) is void for perpetuity: see *Innes* v. *Harrison* [1954] 1 W.L.R. 668. The discretion may, however, be validated by the insertion of the words "during the perpetuity period" between the words "shall" and "in," in the last line of clause 4. The effect of this, however, would be that if and so long as there should be no rules of the Society in force *after* the expiration of the perpetuity period, the income would be payable to the settlor on a resulting trust.

For a shorter form, see Vol. 19, Form 4.

Form 6. Clause 6 and footnote (*b*): Stamp duty relief on property of small value has been extended by section 73 of the Finance Act, 1952: see note to Vol. 12, Form 1. Accordingly, the certificate of value will refer to the sum of £500, £3,000 or £3,450 as the case may require.

Form 7. Footnote (*a*): See also *Re Jenkins' Deed of Partnership* [1948] W.N. 98.

Form 9. Town and Country Planning Act Forms. Since these forms were drafted, the position has been considerably modified by the Town and Country Planning Act, 1953, and reference should now be made to the forms contained in Vol. 17, Form 12.

Form 9. Agriculture Act Forms. Subsection (7) of section 86 of the Agriculture Act, 1947, provides that section 86 is to be in force only during such period as the Minister may by order determine and so far, no such order has been made.

Form 10. See Vol. 18, pp. 3–5, where this form is discussed.

Form 14. Clause (4): See also Finance Act, 1952, s. 73 and note to Vol. 12, Form 1.

Form 17. Clause 6: For the reference to the Law Society's Conditions of Sale (1934 edition), substitute a reference to the 1953 edition of the same Conditions of Sale.

Clause 7 (9): For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 21, Part 1. Clause 5: For "[£1,500]" read "[£3,000], [£3,450]": Finance Act, 1952.

Footnote (*b*): This no longer applies, but relief is only available where the annual rent does not exceed £20.

Form 21, Part 2. Footnote (*c*): For section 38 of the Finance Act, 1938, and section 28 of the Finance Act, 1946, see now sections 405 and 415 of the Income Tax Act, 1952.

Clause 4: The provisions of sub-clauses (i), (ii) and (iv) of this clause are void: see the note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Form 25. See on the working of this Form, Vol. 15, pp. 139 to 140.

Clause 3 (1): For "Agricultural Holdings Acts, 1923 to 1947" substitute "Agricultural Holdings Act, 1948."

Clause 3 (3) (ii): For "Agriculture Act, 1947" substitute "Agricultural Holdings Act, 1948."

Page 372: In the note on Repair Clauses, for section 37 (2) of the 1947 Act, read section 6 (2) of the Agricultural Holdings Act, 1948, and for paragraph 7 of the 6th Schedule to the 1947 Act, read paragraph 7 of the 1st Schedule to the Agricultural Holdings Act, 1948.

Clause 3 (6): For section 24 of the Agriculture Act, 1947, substitute section 50 of the Agricultural Holdings Act, 1948.

Footnote (*f*): For paragraph 8 of the Sixth Schedule to the 1947 Act read paragraph 8 of the First Schedule to the Agricultural Holdings Act, 1948.

Clause 3 (9): After the reference to the Agriculture Act, 1947, add "and the Agricultural Holdings Act, 1948."

Clause 3 (12): For "Agricultural Holdings Acts, 1923 to 1947" substitute "Agricultural Holdings Act, 1948."

Footnote (*a*): See now para. 7 of the 6th Schedule to the Agricultural Holdings Act, 1948.

Clause 4 (9): For "Agriculture Act, 1947" substitute "Agricultural Holdings Act, 1948."

Footnote (*p*): For section 25 (3) of the 1947 Act read section 51 of the Agricultural Holdings Act, 1948.

Footnotes (*u*), (*a*), (*b*), (*c*) and (*d*): The statutory provisions referred to have been re-enacted or substantially re-enacted in the Agricultural Holdings Act, 1948.

Clause 13: For "section 32 of the Agricultural Holdings Act, 1923" substitute "section 16 of the Agricultural Holdings Act, 1948."

Form 26. The statutory provisions contained in the Agricultural Holdings Act, 1923 and the Agriculture Act, 1947, referred to in the footnotes to this Form have been re-enacted or substantially re-enacted in the Agricultural Holdings Act, 1948.

Clause 7: For "section 32 of the Agricultural Holdings Act, 1923" substitute "section 16 of the Agricultural Holdings Act, 1948."

Volume 13.

Form 1. The Town and Country Planning Acts of 1953 and 1954 are concerned primarily with the amendment of the "financial" rather than the "planning" provisions of the 1947 Act. For the sake of completeness, however, it might be desirable, in each of the present forms, to refer compendiously to the Town and Country Planning Acts, 1947 to 1954.

Page 504, clause 2: Development charge has been abolished by the Town and Country Planning Act, 1953, in respect of all development commenced on or after November 18, 1952. Payments may, however, in certain circumstances, still fall to be made in respect of development (*e.g.*, where compensation has been paid on a revocation of planning permission and permission is subsequently granted) see section 29 of the Town and Country Planning Act, 1954. The present covenant should, therefore, be suitably amended to provide for such payments.

Form 3. Clause 4 (4): After the reference to the Administration of Estates Act, 1925, insert "as amended by the Intestates' Estates Act, 1952."

Clause 13: Paragraphs (i), (ii) and (iv) of this clause have been held to be void on the ground of repugnancy to the benefits granted by the deed and as an attempt to oust the jurisdiction of the court: see note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Form 4. Clause 7 (10): See note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Form 9. Footnote (*a*): Succession duty and legacy duty were abolished by the Finance Act, 1949, ss. 27 and 28.

Form 12. Clause 6: Development charge was abolished in respect of all development commenced on or after November 18,

1952, by the Town and Country Planning Act, 1953. Payments in the nature of development charges may, however, sometimes fall to be paid as a condition precedent to an effective planning permission: see section 29 of the Town and Country Planning Act, 1954. Accordingly, in place of the reference to "development charge" in this clause there should be substituted a reference to a "charge or payment" and the references to the Town and Country Planning Act, 1947, should be replaced by references to the Town and Country Planning Acts, 1947 to 1954.

Form 19, Part IV. Footnote (*g*): Succession duty was abolished by the Finance Act, 1949, s. 27.

Form 20. Clause 4 (i): For "Town and Country Planning Act, 1947" substitute "Town and Country Planning Acts, 1947 to 1954"

Clause 4 (iii): For the references to "development charge" substitute references to "charge or payment" and for "Central Land Board" substitute "the appropriate Authority or Authorities." And see note to Vol. 13, Form 12, clause 6.

Form 29. Footnote (*b*): For section 21 of the Finance Act, 1936, see now section 397 of the Income Tax Act, 1952.

Footnote (*d*): For the provisions of section 38 of the Finance Act, 1938, and section 28 of the Finance Act, 1946, see now sections 405 and 415 of the Income Tax Act, 1952.

Clause 8: The provisions of sub-clauses (i), (ii) and (iv) of this clause are void: see note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Forms 30 and 31. Section 48 (1) of the Administration of Estates Act, 1925, has been replaced by a new section 47A: see the Intestates' Estates Act, 1952. This provides that the surviving spouses' life interest (if any) may be redeemed for a capital sum at the election of the spouse, such election to comply with certain specified provisions. For forms of a receipt and an indemnity to administrators drafted pursuant to this new section, see Vol. 16, Forms 18 and 19. In footnote (*a*) of Form 30, the reference to section 46 of the Administration of Estates Act, 1925, is clearly a misprint for section 48.

Volume 14.

Forms 1–4. On the question of stamp duty, see pp. 120–1 of this volume, and pp. 44 and 297–9 of Vol. 15.

Forms 2 & 4. In *Facchini* v. *Bryson* [1952] 1 T.L.R. 1386, the Court of Appeal held that upon the true interpretation of a document under which the defendant, an ex-employee of the plaintiffs, occupied the premises, it was a lease and not a licence, and that parties could not turn a lease into a licence merely by stating that the document was deemed to be a licence. As to the effect of this decision on the present Forms, see Vol. 16, pp. 319–20.

Form 6. Clause 6: See as to this clause pp. 118–9 of this volume.

Form 7. Clause 11: A clause substantially in this form has been held to be void: see note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Form 8. Footnote (*a*): The provisions of the Landlord and Tenant Act, 1927, relating to compensation for loss of goodwill where a tenancy is not renewed and to the right of renewal of tenancies in certain cases, have been repealed: section 45 of the Landlord and Tenant Act, 1954. A tenant must now rely on the provisions of the 1954 Act relating to security of tenure and compensation in lieu. For an account of the salient features of the Act, see Vol. 18, pp. 437–51.

Tenant's Covenant (10): For "development charge" substitute "charge or payment" and for "Central Land Board" substitute "appropriate Authority or Authorities." And see note to Vol. 13, Form 12, clause 6.

Form 9. Footnote (*a*): And see *Harvell* v. *Foster* [1954] 2 Q.B. 367.

Recital (3): In the case of an intestate dying after December 31, 1952, leaving surviving issue, his widow is entitled (*inter alia*) to a net sum of £5,000: Intestates' Estates Act, 1952. This sum should, therefore, where appropriate, be substituted for the sum of £1,000 and reference made to the Intestates' Estates Act, 1952.

Recital (6): After the reference to the Administration of Estates Act, 1925, add "as amended by the Intestates' Estates Act, 1952," and for "Act" substitute "Acts."

Clause 1: After the reference to the Administration of Estates Act, 1925, add "as amended by the Intestates' Estates Act, 1952."

Form 10. Recital (3): See note to Recital (3) in Form 9, *supra*.

Recital (5): After the reference to the Administration of

Estates Act, 1925, add "as amended by the Intestates' Estates Act, 1952."

Recital (6): for "Act" substitute "Acts."

Clause 1: After the reference to the Administration of Estates Act, 1925, add "as amended by the Intestates' Estates Act, 1952."

Form 12. As to whether and if so the circumstances in which such an appointment may amount to a fraud on the power, compare *Re Burton's Settlements*, [1955] Ch. 82 and *Re Simpson* [1952] Ch. 412.

Form 14. Clause 5: For "[£1,500]" read "[£3,000], [£3,450]": see note to Vol. 12, Form 1.

Clause 8: The provisions of sub-clauses (i), (ii) and (iv) of this clause are void: see note to Vol. 1, Form 2, clause 11, sub-clauses (f) and (i).

Form 16. For another form dealing with a registered title, see Vol. 19, Form 1.

Footnote (*a*): A right to use a pleasure ground or garden has been held to be capable of existing as an easement: *Re Ellenborough Park* [1955] 2 All E.R. 38.

Form 18. Footnote (*a*): So far, the recommendation that absolute covenants against assignment or subletting should be construed as if they were qualified covenants only, has not been translated into law. The present Form, however, is, it is thought, likely to be more acceptable to prospective lessees than an absolute covenant.

Footnote (*b*): The reference to *Moat* v. *Martin* should read [1950] 1 K.B. 175. *Swanson* v. *Forton* and *Dollar* v. *Winston* were distinguished in *Thomas Bookman Ltd.* v. *Nathan* [1955] 1 W.L.R. 815.

For an alternative form, see Vol. 15, Form 16. See also Vol. 16, pp. 5–6.

Volume 15.

Form 2. Tenant's Covenant (8): For "development charge" substitute "charge or payment" and for "Central Land Board" substitute "appropriate Authority or Authorities." And see note to Vol. 13, Form 12, clause 6.

Landlord's Covenant (2): For "Arbitration Acts, 1889 to 1934" substitute "Arbitration Act, 1950."

Form 13. Clause 3, last line: For "documents" read "covenants."

Form 20. Footnote (*c*): For an elaboration on this point, see Vol. 16, pp. 7–11.

Form 22. Recital (4): See note to Vol. 14, Form 9, recital (3).

Recital (4) and clause 1: Where the intestate died after December 31, 1952, for "£1,000" substitute "£5,000" and for "£5 per cent." substitute "£4 per cent."

Clause 3: For "[£1,500]" read "[£3,000], [£3,450]": see note to Vol. 12, Form 1.

Volume 16.

Form 5. Footnote (*b*): For "1946" read "1947."

Clause 2 (1) of the Agreement and Tenant's Covenant (13) of Scheduled Lease: For "development charge" substitute "charge or payment" and for "Central Land Board" substitute "appropriate Authority or Authorities." And see note to Vol. 13, Form 12, clause 6.

Form 8. Part I. Clause 3: For "Trustees" read "Purchasers."

Form 13. In the case of an intestate dying after December 31, 1952, the new rules of inheritance contained in the Intestates' Estates Act, 1952, apply. Under these rules, the spouse's "statutory legacy" is, where the intestate leaves issue, increased from £1,000 to £5,000. Further, under para. 5 (2) of the 2nd Schedule to the Intestates' Estates Act, 1952, the statutory power of appropriation includes power to appropriate an interest in the matrimonial home partly in satisfaction of an interest (including the statutory legacy) of the surviving spouse in the intestates' estate and partly (if necessary) in return for a payment of money by him or her to the personal representatives. To accord with the new Act, amendments are required in recitals (4) and (5) and in clause 1 of the present Form. For a form of appropriation of the matrimonial home, see Vol. 17, Form 5.

INDEX

TO THE CONVEYANCER, VOLUME 19

ADMINISTRATION OF ASSETS,
payment of debts and legacies, 312
variation of order, 228

ADVANCEMENT,
rebuttal of presumption, 61

ADVERTISEMENTS,
display without planning approval, 230

AGRICULTURAL HOLDINGS,
agricultural land tribunals, 66
case stated, appeal, 318
fixed equipment, 238
hearing of representations, 238
settled land, 390
tenancy for less than a year, 65

ANNUITIES,
continuing charge on income, 67, 158

BUILDING LICENCE,
termination of regulations, 1

CARAVAN,
hire-purchase agreement, **686**

CHANCEL REPAIRS,
covenants for title, 307

CHARITIES,
agriculture, improvement of, 156
boy scouts, 66
culture, 394
employees, 309
extension of range of investments, 395
income tax, 486
merger of funds, 395
modification of schemes, 157
recreation ground, 393
religious charities, 394
social intercourse, 226
trust deed, **670**

COMPANY LAW,
relief to directors, 436
winding up, disclaimer, 308

COMPULSORY PURCHASE,
compensation, 26, 182
compensation, saving in tax, 314
disputed ownership, 270

[*Black figures indicate Precedents.*]

COMPULSORY PURCHASE—*continued*
injurious affection, 332
mala fides, 313
purchase under Defence Acts, 69
registered land, costs, 243
special suitability, 314

CONFIRMING HOUSES,
liability of, 144

CONTRACT,
determination on notice, 405

COSTS,
breach of trust, 439

COVENANTS,
flats, mutual covenants, **680**
sale, **653**
for title, **696**
misdescription, 171, 219
positive covenants and third parties, 261, 410
release of, **695**
to comply with planning law, **676**
to contribute towards maintenance of common parts, **654**
to insure, **654, 677**
to observe restrictions on sale of flat, **653**
to pay share of water rates, **654**
to permit vendors to view and make good defects, **654**
to rebuild, **654**
to repair, 121, 288, 441, **653, 677**

CREE, MR. DONALD,
retirement, 409

DECLARATION OF TRUST,
by father of half-share in freeholds for son on marriage, **705**

DUSTBINS,
landlord and tenant, 74

EASEMENTS,
jus spatiandi, 220
user for over 19 years, 306

EDITORS,
change of, 409

ENTAILED INTEREST,
contingent gift of, 392

EQUITABLE ASSIGNMENT,
joinder of parties, 225

ESTATE DUTY,
accountability, 463
aggregation and small estates, 279
determined limited interests, 449
disposition in favour of relative, 165
insurance policy, limited interest, 403
valuation, 73

ESTOPPEL,
conveyance by, 170, 221

EXCHANGE,
by tenant for life, of part of property for reversion in other part, **699**

FAMILY PROVISION,
agreement to leave property by will, 243
illegitimate son, 157
moral obligation, 484
time for application, 311

FERRY,
discontinuance, 242

FINANCE OF OVERSEAS SALES,
bills of exchange, 33
insurance with Export Credit Guarantee Department, 36
letters of credit, 37

FISHERY,
general licence, 154

FIXTURES,
lifts, 468

FLATS,
easements, 8
form of transfer, 7, **651**
lifts, 467
mutual covenants, **680**
premiums for, 414
sale of, 3
Sched. A tax, 4

FORMS,
notanda and addenda, 720D, 721

HIGHWAYS,
paving of yards and passages, 153
street works, 151, 308

HIRE-PURCHASE,
caravan, **686**

HOUSEBOAT,
hire of, **690**

HOUSING REPAIRS AND RENTS ACT, 1954,
apportionment of liability for repairs, 252
notice of increase where landlords' proportion not ascertained, 254
repairs increase, 85
services increase, 84
simultaneous applications under ss. 24 and 40...1

HUSBAND AND WIFE,
death of husband before execution of deed for secured provision, 325
deserted wife in matrimonial home, 149, 343
dispute as to possession, 483
joint purchase and mortgage, 389

ILLEGAL CONDITIONS,
legacies of personalty, 176

INCOME TAX,
appeal by successful appellant, 487
charitable donations, 486
child's allowance, 169
company in which public interested, 163
controlled companies, 50
cricketer's benefit, 163
expenses, 487
family companies, 45
finding of fact, 401
incidence of Sched. A tax, 207
lifts, 470
maintenance payments, 320
partnership, 71
premiums, 412
realisation of an investment, 239
repayment, uncertainty of trust, 165
sale of flats, 4
settlement on step-child, 239
settlement, power to determine, 403
trading, single transaction, 70
trustees, 324
transfer of assets, 71
travelling expenses, 70

INSPECTION,
of property belonging to third party, 483

INTESTACY,
personal chattels, 228

JOINT TENANCY,
notice of severance, **694**

JOURNAL OF PLANNING LAW,
amalgamation with *Current Property Law*, 2

LAND CHARGES,
registration of estate contracts, 99

LANDLORD AND TENANT,
dustbins, 74
entry after judgment for possession, 237
fine on assignment, 314
refusal of consent to assignment, 400

LANDLORD AND TENANT ACT, 1927,
improvement made under contract, 315
offer of renewal of tenancy, 316

LANDLORD AND TENANT ACT, 1954,
business statutory tenancy, 236
contracting out, 81
form of notice, 64, 236
occupation by landlord, 398, 399
reversion acquired by local authority after request for new tenancy, 399

LEASEHOLDS,
assignment by mortgagor in consideration of release, **697**

[*Black figures indicate Precedents.*]

LIFTS,
fixtures, whether, 468
rating and income tax, 470
repair of, 480
right to use, 477
service increases, 474

LIMITATION OF ACTIONS,
sureties, 153

LOCAL AUTHORITIES,
exercise of statutory powers, 75, 245

MEMORANDUM,
tenants in common, 148

MISDESCRIPTION,
restrictive covenants, 171, 219

MISTAKE,
sale of land at existing use value, 375

MORTMAIN,
foreign company, 169, 190, 223, 306

MORTGAGES,
assignment of head term in consideration of release, **697**
joint, husband and wife, 389
limitation of actions against sureties, 153
registered land, **675**
relief against forfeiture of leaseholds, 154

MOTOR LAUNCH,
sale of, **692**

NOTICE TO QUIT,
signature, 319

OPTION TO PURCHASE,
assignment, 82, 255

PARTNERSHIP,
accession deed, **719**
articles of partnership between solicitors, **707**
breach of trust, 393
income tax, 71

PERPETUITIES,
termination of war, 224

PERSONAL REPRESENTATIVES,
devastavit, 433
forgery of stock certificate, 244
property passing to, statutory right of action, 312
protection of, 229
retirement, 206, 326
whether trustees, 199

POWER OF APPOINTMENT,
certainty of objects, 64

[*Black figures indicate Precedents.*]

PRECEDENTS,
notanda and addenda, 721

PRELIMINARY INQUIRIES,
town and country planning, **662**

PREMIUMS,
income tax, 412

PROFIT À PRENDRE,
oral grant, 222

PROFITS TAX,
distribution, 241
group assessments on principal company, 73, 240
reduction of capital, 324

PROTECTIVE TRUST,
authority to pay creditor out of dividend, 225
relinquishment of interest subject to, **703**

RATING AND VALUATION,
lifts, 470
Rating and Valuation (Miscellaneous Provisions) Act, 1955...354
withdrawal of appeal, 166, 242

RECITALS,
agreement for exchange, **700**
for partnership, **707, 719**
for release, **696**
for sale, **652, 698**
to settle, **706**
assignment to vendor, **698**
conveyance containing covenants, **695**
desire to introduce partner, **719**
flat scheme, **651**
lease, **697**
mortgage, **698**
seisin, **651, 706**
solicitors' practice, **707**
title under settlement, **700**

REGISTERED LAND,
charge of freeholds and benefit of covenants to pay share of cost of upkeep of drive, **675**
compulsory acquisition, costs, 243
Kent, 329
mortmain, foreign company, 169, 190, 223, 306
rectification and indemnity, 350
report of Registry, 330

RENT RESTRICTION,
agreement to give up possession, 160
alternative accommodation, 235
conditional order for possession, 231
costs, 318
death of tenant, 235
furnished letting, 160, 232
housing trust, 398
improvement or repair, 484
increase of rates, 232
land let with house, 161

[*Black figures indicate Precedents.*]

RENT RESTRICTION—*continued*
landlord by purchase, 159
overpaid rent, 317
premium, 233
rateable value, apportionment, 397
refusal of consent to assignment, 400
sharing with landlord, 316

RENT TRIBUNALS,
appeals, 88
security of tenure, 234

RENTCHARGE,
covenant to pay, **653**
reservation of, **653**

REPAIRS,
covenants as to, 121, 288, 441, **677**
fair wear and tear, 137
improvement or, 484
lifts, 480

REQUISITIONED HOUSES,
compensation, 410, 489
Requisitioned Houses and Housing (Amendment) Act, 1955...83, 258, 489

REQUISITION,
town and country planning, **662**

RESCISSION,
meaning of, 116

RESTRAINT OF TRADE,
solicitors' practice, **711**

RESULTING TRUST,
omission in settlement, 156

RIVERS,
ownership, 172

SETTLED LAND,
agricultural improvements, 390

SETTLEMENTS,
investment clause, 156
omission, 156
step-child, income tax, 239
surtax, payments to trustees by settlor, 323
power of revocation, 321
variation, 155

SOLICITORS,
partnership accession deed, **719**
agreement, **707**

STAMP DUTIES,
assent to beneficiary's assignee, 85
certificate of value, **658**
exchanges, 249
partnership deed, 707

[*Black figures indicate Precedents.*]

SURTAX,
investment company, 69
right to begin at hearing, 162
settlement, payments to trustees by settlor, 323
power of revocation, 321

TENANCY IN COMMON,
memorandum of contract for sale, 148
purchase-money provided in unequal shares, 146

TIMBER,
waste, 107

TOWN AND COUNTRY PLANNING,
advertisements, 230
compensation for compulsory acquisition, 26
for future cases of revocation or modification of planning permission, 28
for past planning decisions, 28
in respect of future planning decisions, 22
covenants as to, **676**
enforcement notice, 313
past transactions, 14
preliminary inquiries, **662**
purchase notice, 158
sale at existing use value, mistake, 375
settlements, compensation, **704**
time limits, 2, 169
Town and Country Planning Act, 1954...13

TRUSTEES,
breach of trust, excusable breaches, 420
partnership, 393
personal representatives, 199

TRUSTS,
variation, 62

TRUSTS FOR SALE,
waste, 107

UNDUE INFLUENCE,
parent and child, 63

UNINCORPORATED SOCIETY,
conveyance to, **667, 679**
declaration of trust, **669, 679**

WASTE,
trusts for sale, 107

WILL,
closing of class, 396
condition in restraint of marriage, 391
extrinsic evidence of existence, 310
implication of absolute interest, 311
omission, 68, 227, 397
protective trusts, relinquishment of interest subject to, **703**
rule in *Lassence* v. *Tierney*, 227
substitutionary gift, 68

[*Black figures indicate Precedents.*]

Printed in Great Britain by The Eastern Press, Ltd., London and Reading

THE CONVEYANCER & PROPERTY LAWYER

Volume 19, No. 1 January–February, 1955

EDITORS

DONALD C. L. CREE, M.A.
of Lincoln's Inn, Barrister-at-Law

EDWARD F. GEORGE, LL.B.
Solicitor of the Supreme Court

CONVEYANCER'S NOTEBOOK 1
THE SALE OF FLATS ... ... E. F. George 3
THE TOWN AND COUNTRY PLANNING ACT, 1954 ... ... J. F. Garner 13
THE FINANCE OF OVERSEAS SALES ... ... David Smout 33
TAX PLANNING AND THE FAMILY COMPANY ... David R. Stanford 45
NOTES OF RECENT CASES 61
THE LIBRARY 76

PRECEDENTS

Transfer of a Freehold Flat in a Block 651
Preliminary Inquiries or Requisitions under the Town and Country Planning Acts 662

SWEET & MAXWELL

TABLE OF CASES NOTED

Bambridge *v.* C. I. R., 71
Bullock *v.* Lloyds Bank, Ltd., 63
Burton *v.* Rednall, 70
Cameron, *Re*, Currie *v.* Milligan, 67
Coates, *Re*, Ramsden *v.* Coates, 64
Follett, *Re*, Barclays Bank *v.* Dovell, 68
Forsters' Settlement, *Re*, 62
Hall's Settlement, *Re*, Sanderson and Others *v.* C. I. R., 73
Heelex Investments, Ltd. *v.* C. I. R., 73
Mousley *v.* Rigby, 68
Orman Brothers, Ltd. *v.* Greenbaum, 64
Page *v.* Pogson, 70
R. *v.* Lancaster Quarter Sessions, *ex p.* Huyton-with-Roby U. D. C., 74
Reid *v.* Dawson, 65
Shephard *v.* Cartwright, 61
Stevens *v.* Britten, 71
Waterloo Main Colliery Co., Ltd. *v.* C. I. R., 69
Watson *v.* Secretary of State for Air, 69
Webber, *Re*, Barclays Bank *v.* Webber, 66
Woollett *v.* Minister of Agriculture and Fisheries, 66

EDITORIAL NOTE

Subscribers and others are invited to submit for consideration by the Editor of the Journal articles or letters on matters of interest to the profession. Any useful or unusual precedents will also be welcome for publication in the Supplement. All communications should be addressed to THE EDITOR, THE CONVEYANCER AND PROPERTY LAWYER, 3 CHANCERY LANE, LONDON W.C.2.

CONTRIBUTIONS *or* MS. *forwarded for insertion in the publication must be sent at the reader's risk; every attempt will be made to return drafts or unsuitable copy, but no guarantee can be given in this respect. The views expressed by contributors are not necessarily those of the Editors who neither accept responsibility for the accuracy of statements appearing in the publication nor undertake themselves to reply to queries. Unsigned contributions are not necessarily of editorial authorship.*

Six Parts a Year. 10s. each. Annual Subscription 35s. post free

Twenty-fifth Edition £7 7s. net.

WOODFALL

The Law of Landlord and Tenant

By LIONEL A. BLUNDELL with Assistant Editors

'A new edition of *Woodfall*, after an interval of fifteen years, is a publishing event of major importance. *Woodfall* has its own individual merits and flavour, which have been preserved in this edition. It has a unity and completeness, and a traditional approach, which are not to be found together to the same extent in other textbooks.'

'A vast amount of work has gone into the preparation of this edition. Fifteen years of case law and statute law have had to be dealt with, and this has been faithfully done. A good deal of rewriting has been involved; the editor and his assistants have not been satisfied with mere patching. The book is attractively produced and bound, and the use of thinner paper has enabled 335 extra pages to be added without appreciably increasing the bulk.'

'The twenty-fifth edition of *Woodfall* and the annual supplements are a MUST for every self-respecting property lawyer's library.'

THE CONVEYANCER

'For 152 years this book has served the legal profession well. It has been thoroughly revised and brought up to date and will remain an indispensable part of a practising lawyer's library.'

LAW NOTES

'The appearance of a new edition is something of an event. The plain fact is that *Woodfall* is a book which will never disappoint the reader in the way that so many works on this branch of law do. If a problem exists and the answer is doubtful, *Woodfall* records most of what is known about it and gives the references from which the remainder can quickly be discovered. Sometimes it is hard to conceal a suspicion that authors of books on landlord and tenant do not even know that a particular problem exists, but this reproach can never be levelled at Mr. Blundell, who (with his assistants) has produced an exhaustive and particularly learned book.'

THE AUCTIONEERS' JOURNAL

'The appearance of the 25th edition of this work may fairly be called an event. Mr. Blundell, who, this time assisted by a number of assistant editors, is responsible for this publication is to be congratulated on having produced a truly comprehensive as well as eminently readable textbook setting out, in tidy form, the vast amount of law which now regulates the relationship of landlord and tenant: whether it be common law, rent control law, agricultural holdings law or what. There is also a great deal of what might be called "useful information," such as the scale charges made by the Chartered Auctioneers' and Estate Agents' Institute; and the precedents of forms to be found in the appendices are of course more numerous, and perhaps more welcome, than ever.'

THE SOLICITORS' JOURNAL

Main Work complete with Permanent Supplement, £7 7s. net.

Permanent Supplement only, 30s. net.

Sweet & Maxwell

ROYAL EXCHANGE
ASSURANCE

MEMBERS OF THE LEGAL PROFESSION WHO SELECT THE ROYAL EXCHANGE FOR THEIR INSURANCE NEEDS WILL FIND AN ENDURING ASSOCIATION BONDED IN COMPLETE CONFIDENCE

*

Newly admitted solicitors are particularly invited to apply for agency terms to the Head Office of the Corporation at

ROYAL EXCHANGE
LONDON, E.C.3.

Printed in Great Britain by The Eastern Press, Ltd., London and Reading.